



AUSTRALIAN INSTITUTE of  
SUPERANNUATION TRUSTEES

## *Mind the gap!*

Resolving the undercoverage of Australia's world class superannuation system

**15 December 2017**

## **AIST Pre-Budget Submission 2018**



### AIST

**The Australian Institute of Superannuation Trustees** is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$700 billion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

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### Executive summary

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**In brief:**

AIST welcomes the opportunity to present our Pre-Budget submission for 2018-19. Our submission presents solutions aimed at reducing the gender gap, with a focus on improving unpaid superannuation, as well as providing an examination of areas of the economy where Australians aren't captured as part of our superannuation system. AIST supports the policy platform of Women in Super, and have aligned with them as part of their Make Super Fair policy.

AIST thanks the Assistant Minister to the Treasurer for the opportunity to present our Pre-Budget Submission for 2018-19.

Our submission this year presents a vision aimed at filling the many gaps that exist, both amongst those covered by Australia's superannuation system, and those who are not. We consider the impact of unpaid superannuation and note the scale of the problem. AIST supports full implementation of all recommendations made by the Senate Economics and Superannuation Cross-Agency Working Group reviews of unpaid super and recommends that the Government proceed to remove the loopholes which penalise employees who use salary sacrifice arrangements by reducing their SG.

In addition, we have highlighted the following areas where little superannuation coverage exists and where urgent solutions must be found to the lack of coverage:

- Contractors and sham contracting arrangements;
- Self-employed, partnerships and family businesses;
- Enforcement of non-SG payments;
- Workers in the cash economy;
- Domestic and household workers;
- Arrangements involving unpaid internships, disability services employees, work for the dole and vocational placements;
- Artificial employment arrangements; and
- Community Development Program participants.

AIST supports the policy platform of Women in Super, and have aligned with them as part of their Make Super Fair policy. All recommendations from Women in Super form part of this submission.

As part of our submission, we make the following recommendations:

- The \$450 per month income threshold for the superannuation guarantee be abolished to improve fairness and reduce incentives to unnecessary casualisation.
- Recommencement of increases to the Superannuation Guarantee (SG) rate from 1 July 2018, with a view to achieving 12% in July 2022.
- All taxpayers eligible for the LISTO to be provided with an additional contribution of \$1,000.
- In addition to examining levels of paid parental leave, SG to be paid on paid parental leave.
- The Government measure and publish the super gap each year, and assess the impact that any future legislative changes to super would have on women.
- SG should be linked to an employee's gross remuneration rather than OTE to reduce confusion, red tape, and manipulation.
- The threshold for small lost member accounts should be progressively reduced back down to \$2,000 by January 2020 and the lost and unclaimed super rules should be reviewed.
- The ATO should be responsible for enforcing non-SG payments made through employers under a regime that is for all intents and purposes identical to that which exists for SG amounts.
- The Age Pension assets test taper rate should be reduced to \$2.
- The proposed increase in the Age Pension age to 70 years should be ruled out.
- Funding to indigenous identification schemes should be increased, and the provision of financial counselling services to Aboriginal and Torres Strait Islander people increased.
- Financial counselling services should be increased to provide Aboriginal and Torres Strait Islander people with appropriate guidance on accessing information about their personal finances.

We have also suggested that the Government re-consider Member Benefit Protection as a solution to small account balance erosion, and that the ATO commits to a holistic programme of superannuation administration.

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## Defining the gap

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### The impact of unpaid superannuation

The Productivity Commission has recognised unpaid superannuation as one of the ‘egregious inefficiencies in the superannuation system’<sup>1</sup> and recommended that these should form indicators in minimising leakages from the superannuation system

Unpaid superannuation has been identified as a significant problem affecting Australians, with recent estimates from the Tria and Cbus report suggesting that as many as 326,000 people (3% of the workforce) are affected<sup>2</sup> through unofficial cash economy employees, as well as sham contractors. The report estimates that \$1.1 billion is the amount of super lost. The prevalence of sham contracting arrangements was also singled out as a significant systemic risk in the Inspector-General of Taxation’s report in 2010<sup>3</sup>:

*The IGT [Inspector-General of Taxation] believes that the sham contractor issue represents a significant systemic risk in the SG system, given that it potentially affects those most reliant upon SG as a source of retirement income. In evidence to the IGT, a number of stakeholders indicated that some employers now use the ABN as the touchstone of whether a person is an employee or independent contractor. In many instances, persons who would ordinarily be considered employees under the common law tests or under the expanded definition of employee under the SGAA, are nevertheless treated as independent contractors on the basis that they have provided an ABN.*

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<sup>1</sup> Productivity Commission, (2016). *How to Assess the Competitiveness and Efficiency of the Superannuation System*. Productivity Commission Research Report. [online] Canberra: Productivity Commission, p.133. Available at: <http://tinyurl.com/zzlqwr3> [Accessed 9 Feb. 2017].

<sup>2</sup> Tria Investment Partners in an appendix to Industry Super Australia, and Cbus, (2016). *Overdue: Time for Action on Unpaid Super*. ISA/Cbus report December 2016. [online] Melbourne: Industry Super Australia. Available at: <http://tinyurl.com/je8wpky> [Accessed 9 Feb. 2017].

<sup>3</sup> Inspector-General of Taxation, (2010). *Review into the Australian Taxation Office’s administration of the Superannuation Guarantee Charge*. A report to the Assistant Treasurer. [online] Canberra: Inspector-General of Taxation, paragraph 4.117. Available at: <http://tinyurl.com/j8wualv> [Accessed 9 Feb. 2017].

However, where the IGT recommended<sup>4</sup> that proactive Superannuation Guarantee (SG) audit work be expanded to allow for real time monitoring and follow-up of high risk employers, the ATO disagreed<sup>5</sup> with this recommendation on the basis that it considered it was already engaged in this work, with 27% of SG compliance resources working on proactive work.

This figure of \$1.1 billion lost is higher when employer non-compliance and insolvency is also considered, with figures suggesting that \$2.6 billion was lost<sup>6</sup> in 2013, with this figure being revised upwards to at least \$3.6 billion in 2013-14<sup>7</sup>, affecting a total of 2.4 million workers<sup>8</sup>. This is forecast to increase to \$66 billion by 2024.

Industry Super Australia (ISA) and Cbus note in their report that it is mostly low-income earners, younger workers and workers in the construction industry who are likely to miss out.

Despite comprehensive guidance from the ATO about how the superannuation guarantee is calculated, there is still uncertainty in business about when and how to pay superannuation. The Australian National Audit Office (ANAO) noted in their report<sup>9</sup> that:

*Some features of the operation of the SG Scheme present practical challenges for employers, employees, and the ATO, including:*

- *calculating SG amounts is not always straightforward for employers and employees. Also, the ATO does not have access to all the information that would support an accurate estimate of the SG contributions that should be or have been paid by employers;*
- *the penalties when employers pay their employee SG contributions late (through the SG charge) have been described by the ATO as punitive and inequitable;*

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<sup>4</sup> Inspector-General of Taxation (2010), cited in a previous footnote, at Recommendation 4.

<sup>5</sup> ATO response, quoted in Inspector-General of Taxation (2010), cited in a previous footnote, p.54.

<sup>6</sup> Tria Investment Partners, (2015). *Superannuation Guarantee non-compliance*. Cbus September 2015. [online] Melbourne: Cbus. Available at: <http://tinyurl.com/hgtpoog> [Accessed 9 Feb. 2017].

<sup>7</sup> Industry Super Australia, and Cbus, (2016), *Overdue: Time for action on unpaid super*, p.5 [online] Melbourne: Industry Super Australia. Available at: <https://tinyurl.com/je8wpky> [Accessed 14 Dec 2017].

<sup>8</sup> Industry Super Australia, and Cbus, (2016), cited in a previous footnote, at p.5.

<sup>9</sup> Australian National Audit Office, (2015). *Promoting Compliance with Superannuation Guarantee Obligations*. ANAO Report No.39 2014–15 Performance Audit. [online] Canberra: Australian National Audit Office, para.7. Available at: <http://tinyurl.com/zzbnajk> [Accessed 9 Feb. 2017].

- *as employees have a choice of superannuation funds, employers may be required to make payments to multiple funds, incurring additional administrative costs; and*
- *while employers are required to indicate on payslips the amount of SG contributions accrued, this does not necessarily mean that this amount was actually paid to the superannuation fund. In addition, SG payments are generally made quarterly, but employees often receive a statement from their fund annually. Consequently, an employee may not detect the non-payment or under-payment of SG contributions until almost 12 months after the payment was due. These factors also increase the difficulty for the ATO to identify and investigate non-compliance in a timely manner.*

The ANAO, whilst generally supportive of the ATO's administration of the SG scheme, disagreed with the ATO's assertion that 'overall employers demonstrate high levels of voluntary compliance'. The ANAO note that the ATO's own internal risk assessment shows a rate of non-compliance amongst employers of between 11-20%<sup>10</sup> and that non-compliance is "endemic" in certain industries, particularly affecting lower paid employees who are more likely to rely on the Age Pension in later years.

AIST has consistently advocated for simplification of SG arrangements, including the following solutions to the issues raised in the ANAO's report:

### **1. Basing the SG on gross remuneration rather than Ordinary Time Earnings (OTE)**

Calculation of the SG for employers, employees and the ATO would be greatly simplified by basing the calculation on gross remuneration, rather than OTE. Gross remuneration would capture all assessable payments to employees, including overtime.

A recommendation to base SG on gross remuneration rather than OTE forms part of this submission, and the benefits are also discussed at greater length.

### **2. Support for Single Touch Payroll**

AIST has supported the Single Touch Payroll proposal since it was announced<sup>11</sup> by the then Minister for Small Business, the Hon Bruce Billson MP along with the then Assistant Treasurer, the Hon Josh Frydenberg MP. AIST supports Single Touch Payroll for several reasons which we have described in greater detail elsewhere in this submission, but most notably, it will provide better assurance that employers are paying their superannuation obligations on time.

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<sup>10</sup> Australian National Audit Office, (2015), cited in a previous footnote, para.14.

<sup>11</sup> Billson, B., Frydenberg, J., (2013). *Cutting Red Tape For Employers Through Single Touch Payroll*. [online] Available at: <http://tinyurl.com/jkctx9u> [Accessed 13 Feb. 2017].

### **3. Support for SuperStream and the Small Business Super Clearing House**

Supported by AIST, the SuperStream reforms mean that the costs and complexity associated with making contributions to super funds by employers have greatly reduced. Employers can now use their payroll systems to transmit contributions as a single transaction and do this through a centralised electronic gateway. In addition, and as detailed later in this submission, the mandated 3-day transaction processing requirement means that members can better track the progress of payments from employers.

For small employers with less than 20 employees, the option to use the ATO's Small Business Super Clearing House means that all contributions can be made using SuperStream at once for free.

AIST believes that continual improvement in payment technology will reduce costs associated with employer contributions, allowing employers to increase the attractiveness of different superannuation packages to attract and retain talent.

### **4. Improved payslip reporting**

AIST supports improved payslip disclosure, with details included on payslips of, not only amounts accrued for the purposes of superannuation, but also details of planned and actual payment dates for contributions. Better payslip disclosure provides certainty that superannuation contributions have been paid. AIST has discussed payslip disclosure in further detail elsewhere in this submission.

In addition to our recommendations to address the findings in the ANAO report, AIST supports implementation of all recommendations made by Senate Economics References Committee as well as the Superannuation Cross-Agency Working Group which address unpaid superannuation. AIST also supports the decision to close legislative loopholes which allow some employers to avoid paying their full Super Guarantee (SG) entitlement for employees who utilise salary sacrifice arrangements.

## **Inside and outside the scope of the problem**

Despite the well-intentioned efforts at curtailing the problems associated with unpaid superannuation, the scope of dialogue to date has been limited by two significant constraints, being the requirement to be classified as an employee, and the limitation of focus to a specific type of contribution, being the SG.

AIST has consistently argued that these constraints have contributed to a significant understatement of the problems associated with the underpayment of superannuation in Australia. The impact of this problem manifests itself both in the future, with increased reliance

on the Age Pension, as well as in the present, since there is an added complication that Australians without superannuation are also likely to be missing out on insurance coverage through their superannuation.

We consider that the following instances have been excluded from the scope of discussion of the problem and thus require urgent solutions.

### **1. Contractors and sham contracting arrangements**

Contractors are under no obligation to have superannuation contributions made by their employer. Whilst we accept that there are genuine contractual arrangements that cannot be interpreted as an employment instance, we also acknowledge that there is a growing problem associated with sham contracting.

AIST believes that sham contracting would be reduced if the criteria for sham contracting were brought into line with alienation of personal services income rules. However, we also suggest that the self-employed who provide labour-like services through genuine contractual arrangements are also inadequately covered by superannuation arrangements.

### **2. Making superannuation more attractive to the self-employed, partnerships and family business arrangements**

Evidence suggests that the self-employed and other tightly held enterprises forgo superannuation in order to invest more into their businesses. Although this is admirable, superannuation trustees have long promoted the benefits of diversification, and believe that the self-employed could similarly benefit from avoiding putting all eggs in one basket.

AIST believes that the ATO and ASIC could be involved in making superannuation more attractive to the self-employed and suggest that this could be undertaken along with financial literacy work as well as tax and Business Activity Statement (BAS) interactions.

We additionally note that this can affect other parties to such enterprises, including silent partners and directors who are, in a large number of instances, spouses to the individual in effective control. We suggest that investigation of the duties that small tightly held enterprises owe to minority interests, with the view that adequate superannuation may form one of these duties.

### **3. Enforcing payment of non-SG payments where members are reliant on third parties such as employers**

In our submission, we discuss at length the problems associated with the difficulty that Australians have in enforcing payment of these. We recommend that the ATO be tasked with the

enforcement of arrangements such as salary sacrifice and voluntary non-concessional contributions arranged through employers where these payments are not made.

#### 4. Workers in the cash economy

AIST welcomes the recent efforts by Treasury and the ATO in tackling problems caused by the cash economy, and has welcomed the work to date by the Black Economy Taskforce. Indeed, our submission<sup>12</sup> on the interim statement of the Black Economy Taskforce noted that:

One of the recommendations of the Black Economy Taskforce is that:

*Businesses should not be able to claim deductions on cash wage payment where they did not make or report Pay As You Go (PAYG) payments, issue payment summaries or statements of earnings, or make applicable superannuation contributions.*

The interim report makes numerous observations about superannuation in the context of the black economy, including that:

*Many small businesses do not have a good understanding of financial management and the tax and superannuation systems. Stakeholders consider that better education in financial management, and tax in particular, especially for those setting up a business for the first time is necessary. Simple and low cost business and accounting systems would also help.*

AIST acknowledges these comments and gives our support to most of them. However, we recommend an alternate approach in relation to the following comment:

*The New Payment Platform (NPP) has the potential to allow users to verify ABN details, reducing the scope for fraud (quoting of incorrect ABNs) we see today. Another possible future NPP use would be to allow employers to make superannuation guarantee charge payments direct to the funds, potentially obviating the need for the ATO to act as intermediary while avoiding an increase in compliance burden for small business.*

While recognising and supporting the overall benefits of the NPP, our contrary view about SG compliance continues to be that the ongoing development of SuperStream, the Superannuation

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<sup>12</sup> Scheerlinck, E. (2017). *Re: Black Economy Taskforce*. [online] Melbourne: Australian Institute of Superannuation Trustees. Available at: <https://tinyurl.com/y94kohmf> [Accessed 15 Dec. 2017].

Transaction Network, Single Touch Payroll and the new reporting arrangements (MATS/MAAS) will be the most effective way of increasing superannuation compliance.

### **5. Domestic and household workers**

We explain elsewhere in this submission that with our recommendation for the removal of the \$450 per month income threshold for calculating SG contributions as well as our suggestion regarding investigation of the reintroduction of Member Benefit Protection would see low paid workers better looked after by the superannuation system.

However, we also suggest investigation of the domestic and household workers exemption, where such workers must also provide more than 30 hours of work in a month to qualify for superannuation, on top of the \$450 minimum. AIST is concerned that this acts against women and low-paid workers, and is contrary to the idea of a level playing field in businesses such as housekeeping and childcare.

### **6. Arrangements such as unpaid internships, disability services employees, work for the dole arrangements and vocational placements**

AIST is also concerned that arrangements involving unpaid work, such as internships, are on the increase. We suggest that the use of these arrangements be strictly monitored to ensure that these arrangements are made in a responsible way and are not arranged to avoid employer obligations towards their employees.

We would also suggest that extending superannuation arrangements to low-paid arrangements, including disability services, vocational placements, work for the dole, and other arrangements should be reviewed to ensure that workers' retirement savings are appropriately considered in exchange for time spent by members in this sort of activity.

### **7. Artificial employment arrangements**

Reports exist of employees in various industries in Australia who work unusual hours. Not uncommon in the hospitality and resources industries are employees whose only work is classified as overtime. As we explain in greater detail later in our submission, AIST has long supported the wholesale reform and simplification of the SG regime so that it is paid on gross remuneration rather than Ordinary Time Earnings (OTE).

### **8. Community Development Program participants**

The Community Development Program (CDP) commenced operation 1 July 2015. The stated purpose of the program is to provide work and support to job seekers located in remote Australia. Approximately 83% of individuals utilising the program identify as aboriginal or Torres Strait

Islander, however under the program workers have no right to access workers compensation arrangements or holiday pay and they are not paid superannuation.

We believe that superannuation is a universal workplace entitlement and therefore should be paid to individuals accessing the CDP program, this is particularly the case when you consider that many participants are First Australians and suffer disadvantage. CDP workers are no different to any other Australian worker and should be afforded the same rights and protections as other Australians in the workforce.

### **Alignment with Women in Super on the gender gap**

AIST supports the policy platform of Women in Super to improve women's retirement outcomes. Women in Super (WIS), as part of their Make Super Fair policy, explain that:

- Women still retire with 47% less super than men;
- It is estimated that more than 40% of older single women live in poverty;
- Women are more dependent than men on the age pension;
- The fastest growing cohort of homeless people are single older women; and

Tax concessions in superannuation are skewed towards high income earners – a more equitable redistribution of tax concessions could make a meaningful impact on the gender super gap.

WIS has developed a five-point plan to address these issues and work towards developing a fairer system that sees women and low-income earners reach greater economic security in retirement:

1. Additional annual \$1,000 government contribution into super for low income earners, to better support those with inadequate retirement savings
2. No further delay to scheduled superannuation guarantee (SG) increases
3. Pay SG on the government paid parental scheme
4. Remove the \$450 monthly income threshold on SG contributions
5. Require Government to undertake and publish a gender impact statement for any changes to age pension or retirement income policy; ongoing tracking by WGEA of women's retirement gap.

This has been independently costed by Rice Warner at \$2.7 billion dollars per year.

AIST agrees with WIS that this is a crisis affecting women entering the workforce, who will face the same fate as women retiring, if this situation is not rectified.

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## Recommendations

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### Improve the fairness of the superannuation system

#### Removal of the \$450 per month superannuation guarantee (SG) threshold

AIST recommends the removal of the \$450 per month income threshold on the Superannuation Guarantee as a measure to improve fairness.

There are four reasons supporting our recommendation:

- Cost to government would be minimal.
- Those on lower incomes would have a better retirement outcome.
- Australia's superannuation coverage – while quite high – is comparatively lower than other systems with mandatory superannuation.
- Increasing numbers of people have multiple jobs. While each may be paying under \$450 per month, the aggregate may be much more.

#### **Cost to Government**

Access Economics<sup>13</sup> modelling commissioned by AIST in 2009 shows that while the aggregate cost of removing the \$450 monthly threshold would be small, industry experience suggests it is likely to be quite concentrated, resulting in significant improvements for those individual workers who are most disadvantaged by the current exemption. Access Economics estimated that the cost to government of removing the exemption would be minimal (0.003 per cent of GDP in 2041).

#### **Improving retirement for part-time employees (particularly women)**

AIST notes that the high concentration of females working part-time is a contributing factor to their relatively low superannuation balances. Women comprise just under 70% per cent of the part-time workforce, with more (54.3%) employed part time than full time (45.7%)<sup>14</sup> (over three times as many full-time workers are men as compared to part time male workers). AIST has long argued that abolishing the exemption on compulsory superannuation contributions for those earning less than \$450 per month would benefit many women – as well as males – on low incomes, working on casual or part-time bases. In female-dominated industries where working for several employers is common (such as retail, hospitality and health sectors), many employees are

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<sup>13</sup> Access Economics Pty Ltd. (2009). *Retirement Incomes Policy Simulations Paper*. Melbourne: Australian Institute of Superannuation Trustees and Industry Superannuation Network.

<sup>14</sup> ABS (2017). *6306.0 - Employee Earnings and Hours, Australia, May 2016*. [online] Canberra: Australian Bureau of Statistics. Available at: <https://tinyurl.com/yadwl6f6> [Accessed 13 Dec. 2017].

excluded from the SG system because the \$450 threshold applies only to a single employer, and not on a combined income level. Australia ranks fifth in the OECD for incidence of women in part time work at 38.5%.<sup>15</sup>

AIST also submits that, in tandem with the removal of the threshold, further steps should be considered to protect small account balance members from the erosion of their benefits by fees. The introduction of MySuper was accompanied by the abolition of Member Benefit Protection (MBP). Prior to this, the operation of MBP meant that, for members with account balances of less than \$1,000, the cost of administration fees could not exceed the value of investment returns applied to account balances. AIST suggests that the Government investigate the reintroduction of MBP as a protection for the low balance members who would receive additional superannuation as a result of the removal of the threshold.

We note below that the impact of the removal of member benefit protection has resulted in erosion of low member balances by dollar-based account fees. Although we discuss this issue at greater length below, this poses a disproportionately large threat to Australians on lower incomes, due to the regressive impact of dollar based fees on their accounts.

It should also be noted that at current SG rates, anyone earning just under the threshold would be eligible for \$42.75 per month: Administration of this measure could cost more than this. The cost to Government for this measure would therefore be limited solely to the Low Income Superannuation Tax Offset (LISTO) payable, and has been costed at less than \$5 million per year<sup>16</sup>.

### **Reducing incentives to the unnecessary casualisation of the workforce – the “gig economy”**

We note that whilst wages have grown, so too has the increasing casualisation of the Australian workforce. As the percentage of Australians holding more than one job increases, so too does the likelihood that at least one job will pay under the \$450 threshold. As this, in turn, affects the retirement savings of Australians, we believe that time is right to debate the role that this threshold plays in limiting the retirement comfort of Australians.

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<sup>15</sup> OECD (2014). *LMF1.6: Gender differences in employment participation*. OECD Family database [www.oecd.org/social/family/database](http://www.oecd.org/social/family/database), OECD - Social Policy Division - Directorate of Employment, Labour and Social Affairs. [online] Organisation for Economic Co-Operation and Development, p.1. Available at: <https://tinyurl.com/y7r7kwdt> [Accessed 13 Dec. 2017].

<sup>16</sup> Clare, R. (2017). *Equity and superannuation – the real issues*. [online] Sydney: Association of Superannuation Funds of Australia, p.15. Available at: <https://tinyurl.com/jbtjtko> [Accessed 18 Jan. 2017].

AIST considers that the \$450 threshold provides an incentive for business to retain casual employees on low work rostering to avoid superannuation obligations and should be abolished.

### **Re-introduction of Member Benefit Protection (MBP)**

In the years since the limits in SG participation were formulated, a great deal of change has happened in the Australian workplace, as well as the Australian superannuation system. The introduction of MySuper was accompanied by the removal of member benefit protection. Although we note that this was a reflection of the growth in real wages in the Australian economy, we also note the increased impact of the loss of contributions due to members falling below the \$450 threshold on low account balances. The Insurance in Superannuation Working Group is currently looking at ways to reduce the impact of insurance premia on accounts in this situation.

Although MBP was removed in order to support the aims of MySuper's removal of cross-subsidisation, the regressive impact of dollar-based fees on small account balances is more pronounced as the casualisation of the Australian workforce increases. AIST suggests that the Government investigate the reintroduction of MBP as a measure to address the issues associated with account balance erosion, particularly if the Government is moved to remove the \$450 per month SG threshold. While we note that there are varying methods of addressing account balance erosion, this suggestion has the benefit of requiring little system change. This is because most administration systems still have the functionality to apply MBP.

### ***Regressive impact of dollar-based fees***

The impact of fixed dollar-based fees will be more acutely felt by small account balances. Although the removal of member benefit protection was designed to ensure no cross-subsidisation, the real impact of dollar-based fees is disproportionately higher on lower balances rather than higher balance members.

#### **Example**

Two members of the same fund, Don and Barbara are being charged \$200 per year in administration fees. However, Don has a balance of \$2,000 and Barbara has a balance of \$20,000.

It can be seen that the impact of the administration fees is a net cost to Don of 10%, however to Barbara, this is a cost of 1%.

It can be seen that in the above example, Don is being charged a proportion of his balance that is, although in dollar terms identical, in real terms 900% higher than Barbara's. Some commentators have indicated that this is now evidence of a reversed cross-subsidisation<sup>17</sup>.

AIST notes that work presently being undertaken by the Insurance in Superannuation Working Group (ISWG) will further reduce the erosion of small accounts by insurance premia.

### **Review the timeframe around increases to the Superannuation Guarantee**

The changes to the schedule of increases to the Superannuation Guarantee (SG) which will see it eventually increase to 9.5% was formally delayed in 2014, through the repeal of the Mineral Resources Rents Tax.

Under the current timetable, the SG rate is set to increase to 12% from the earliest date of 1 July 2025, and will be fixed at 9.5% until 1 July 2021. This represents a major setback to a key long-term objective of superannuation, which is to ensure all working Australians enjoy an adequate retirement income. Delays to the SG timetable will also create more fiscal pressure on future governments in relation to Age Pension funding. To this end, AIST recommends the recommencement of regular increases to the SG rate so that the targeted SG rate of 12% may be reached sooner. The following schedule illustrates how soon this transition could occur (Table 1):

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<sup>17</sup> Power, T. (2016). Fee hike for small super accounts. [blog] *SuperGuide*. Available at: <https://tinyurl.com/yc8mmxz1> [Accessed 1 Dec. 2017].

Financial year	SG charge percentage		
	Rates as per the originally proposed schedule (%) <sup>18</sup>	Rates as per the current schedule (%)	Schedule of rate increases proposed in this submission (%)
2017-18	11.0	9.5	9.5
2018-19	11.5	9.5	10.0
2019-20	12.0	9.5	10.5
2020-21	12.0	9.5	11.0
2021-22	12.0	10.0	11.5
2022-23	12.0	10.5	12.0
2023-24	12.0	11.0	12.0
2024-25	12.0	11.5	12.0
2025-26	12.0	12.0	12.0

Table 1

AIST recommends recommencement of increases to the SG rate from 1 July 2018, with a view to achieving 12% in July 2022.

## Measures to benefit women and low-income Australians

### Provide a \$1,000 low income contribution

The LISTO (currently set at a maximum of \$500) represents a refund of contributions tax on superannuation, based upon the maximum of notional or actual superannuation contributions from one earning an adjusted taxable income of \$37,000 per year or less. Whilst this appears to be reasonable, women and other low-income earners remain at a significant disadvantage compared to other taxpayers due to three factors.

For lower income earners, the LISTO payable will be less. The LISTO is limited to \$500, however as LISTO payable is a function of the SG, this figure reduces to zero as a proportion of adjusted taxable income.

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<sup>18</sup> Superannuation Guarantee (Administration) Amendment Act 2012 at Schedule 1, Item 2.

At the same time, the net tax concession for lower income earners will also be less. Taxpayers earning less than the tax-free threshold are unable to collect a concession at all, with the LISTO merely representing a return of contributions tax.

Finally, the amount being contributed into superannuation will be less due to smaller contributions. In addition, the ability of low income earners to make additional contributions is severely curtailed by the cost of living.

The net effect of all three factors is smaller superannuation balances, a reduced quality of life in retirement and an increased reliance on the Age Pension.

AIST recommend that all taxpayers eligible for the LISTO be provided with an additional contribution of \$1,000. ATO figures show that 3 million Australians were eligible for the LISTO's predecessor scheme from 2016-17. This would imply a cost of \$3 billion, at 2017 rates.

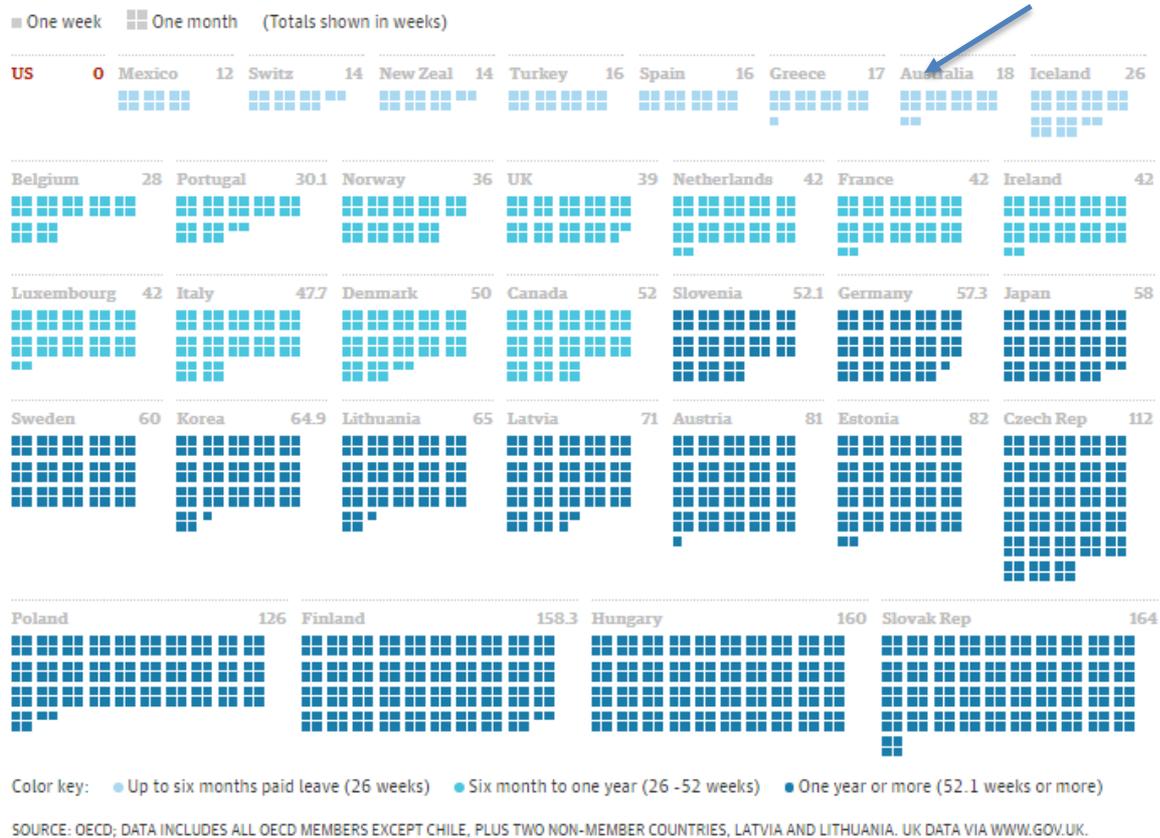
### **Pay SG on paid parental leave**

AIST supports a Government-funded parental leave scheme that includes a superannuation component, linked to the payment of SG contributions required on average weekly earnings. The implementation of a paid parental leave scheme with a superannuation component, would allow parents to continue building their superannuation whilst on parental leave.

The lack of such a superannuation component – coupled with the very low level of paid parental leave – adversely contributes to the gap between women and men's retirement savings. Paid parental leave schemes (coupled with superannuation) assist with improved workforce participation rates (particularly for women of child bearing age). The following is a chart<sup>19</sup> representing where Australia sits comparatively in terms of paid parental leave (next page):

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<sup>19</sup> Popovic, N. (2014). The US is still the only developed country that doesn't guarantee paid maternity leave. *The Guardian*. [online] Available at: <http://tinyurl.com/mtabaum> [Accessed 18 January 2017].



AIST recommends that (in addition to examining levels of paid parental leave) SG be paid on paid parental leave.

## Measure and publish the impact that any future changes to super would have on women

A number of factors act against women reaching the best possible retirement outcomes, and the impact of tax, economic and social policy can have different consequences for women as opposed to men. As part of this submission, AIST recommends that the Government measure and publish the super gap each year, and assess the impact that any future legislative changes to super would have on women.

AIST also considers that there is a need to reinstate the Women’s Budget Statement which would allow proper analysis of the impact of the budget on women, and could help in rectifying the gender super and gender pay gap.

### **Link the Superannuation Guarantee to a gross remuneration measure**

The SG is presently linked to ordinary time earnings, or OTE. OTE unfortunately only captures some of the many payments that can be paid to employees as part of their work. OTE does not incorporate overtime, whether or not this is regularly worked, nor does it incorporate paid parental leave.

It is not always clear whether a payment forms part of OTE. In Superannuation Guarantee Ruling SGR 2009/2<sup>20</sup>, the Commissioner of Taxation considered 24 different types of payments (with some of these further broken down into sub-types) and only concluded in 14 cases that these formed part of OTE.

We have included the table from SGR 2009/2 as an appendix to this submission.

Although SGR 2009/2 forms guidance and is not binding upon the Commissioner of Taxation, the confusion that this creates is unnecessary. In addition, we are concerned that these payments are capable of being gamed by employers or employees in order to reduce an employer's SG liability, or inflate an employee's take-home pay at the expense of their retirement savings.

In addition, we point to the gender pay and retirement savings gap between male and female Australians and note that as recently as October 2015<sup>21</sup>, we recommended that the superannuation guarantee be also paid on paid parental leave.

AIST recommends that SG be linked to an employee's gross remuneration rather than OTE to reduce confusion, red tape, and manipulation.

### **Commit to a holistic programme of superannuation administration**

The ATO presently administers a number of areas of superannuation, including the SG, SuperStream and gateway infrastructure, Single Touch Payroll, lost and unclaimed superannuation and self-managed superannuation funds.

AIST believes that the present administration of superannuation by the ATO can be further improved by re-organising the various programmes around a theme of reconnecting

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<sup>20</sup> Australian Taxation Office, *Superannuation guarantee: meaning of the terms 'ordinary time earnings' and 'salary or wages'*, SGR 2009/2, 13 May 2009.

<sup>21</sup> AIST, (2015). *Senate Economic References Committee: Economic Security for women in retirement*. [pdf] Canberra: Parliament of Australia. Available at: <http://tinyurl.com/h6hmcay> [Accessed 5 Feb. 2016].

superannuation monies back to members. We have discussed a number of initiatives that the ATO should undertake below.

### **Implement recommendations of the Senate Economics and Cross-Agency inquiries into unpaid superannuation**

AIST supported all of the 32 recommendations made in the Senate Economics References Committee report, *Superbad – Wage theft and non-compliance of unpaid Superannuation Guarantee*<sup>22</sup>, and has previously called on the Government to prioritise their implementation.

AIST also supported the nine recommendations made by the Superannuation Cross-Agency Working Group, including the decision to close legislative loopholes which allow some employers to avoid paying their full Super Guarantee (SG) entitlement for employees who utilise salary sacrifice arrangements.

Superannuation is a key component of an employee's remuneration package and these recommendations will help ensure that appropriate consumer protections are in place. AIST enthusiastically supports the Government's announcement to close the salary sacrifice loopholes and looks forward to this measure's safe passage through Parliament.

### **Commit to a programme to connect members with unpaid superannuation**

Throughout 2015, the ATO undertook discussions with the superannuation industry around SG compliance and what priority work need to be progressed. AIST and other industry representatives, including Industry Funds Credit Control, participated in this process.

While this was a useful initiative involving many projects, and one to which the superannuation industry was committed, it has proceeded on an exceedingly slow basis, and has not resulted in resolution of compliance issues. This was despite the development of concrete and practical proposals being developed with industry assistance.

The underlying problem with unpaid superannuation, however, is that an entity is breaching its covenant with its employees and with the greater community by not paying its superannuation obligations. AIST believes that the onus of responsibility on members to make a complaint (often long after the event) is inappropriate, and that the ATO should assume a more proactive responsibility in this process. By acting on up to date and consolidated information reported in close to real time, such as the payment of wages and superannuation, by employers and

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<sup>22</sup> Senate Economics References Committee (2017). *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*. [online] Canberra: The Senate. Available at: <https://tinyurl.com/ybeymust> [Accessed 15 Dec. 2017].

superannuation funds, the ATO would have the tools to act on breaches long before members were even aware that there was a problem.

### **Progressive reduction in the small lost member account threshold to \$2,000**

AIST notes and welcomes initiatives taken at the ATO to reduce red tape for small business and to increase the efficiency of the superannuation system. Major technological improvements such as SuperStream have revolutionised superannuation, reduced errors, improved non-payment problems and reduced the time out of the market previously suffered by superannuation members as their contributions waited to be connected with their accounts.

Further initiatives, such as Single Touch Payroll will see members better connected with their superannuation. Together, these improvements mean that lost superannuation will become less of an issue.

AIST takes this opportunity to point out that the policy need for such high thresholds for “small” lost member accounts will be increasingly less relevant due to these initiatives. We recommend that the threshold balance, recently increased to \$6,000, is progressively reduced to \$4,000 on 1 January 2019, then to \$2,000 in 2020.

We further believe that the rules regarding lost and unclaimed superannuation are unnecessarily complicated and we would welcome measures to streamline these rules. We additionally believe that the ATO will be able to direct more resourcing to matching lost super with members as the benefits of Single Touch Reporting and the MAAS and MATS projects begin to crystallise.

### **More regular reporting of contributions and individual access through MyGov**

The MAAS and MATS projects currently underway at the ATO will lead to better reporting through the MyGov superannuation dashboard, and AIST and other stakeholders are involved in consultations about them. AIST recognises and supports the ability of MyGov to carry and display more up to date information to taxpayers as a result of the projects. However, we also emphasise that this information is of little use unless the information is being disclosed in a meaningful way on the MyGov super dashboard.

AIST argues that with the increased level of data available to the ATO, the ability to provide better experience for individuals as well as the community benefits associated with better enforcement will be immediately apparent. To provide more detail, this would:

- Enable better, immediate, informed decision-making for super fund members through the visibility of complete and accurate data, allowing balances to be monitored and non-payment or under-payment issues able to be taken up directly with the member’s employer;

- Support employers 'doing the right thing' and early intervention on non-compliance;
- Reduce insolvent trading and create a level playing field for employers; and
- Provide universal transparency for consumers.

To this we also add that recent changes such as the legislation of the First Home Super Saver Scheme now add to the imperative of providing meaningful, up to date and comprehensive data relating to superannuation to members through MyGov.

### **Unpaid non-SG contributions**

AIST notes that the SG is only one of a number of payments that can be arranged between employers and employees into superannuation. However, the SG is the only one of these that has an enforcement regime.

There presently exists little information available to employees as to what they can do if an employer is failing to make salary sacrifice, member voluntary or employer voluntary contributions that have been agreed with employees over and above SG amounts. AIST points out that assistance from websites of the ATO, Fair Work Ombudsman or ASIC's MoneySmart is limited to SG amounts leaving

This only leaves the prospect of expensive legal action, which would be highly cost-ineffective compared to the amount of the contributions themselves. Clearly this is unacceptable.

AIST recommends that where these payments are agreed between employers and employees, an enforcement regime should be created that is for all intents and purposes identical to that which exists for SG amounts. AIST also recommends that the ATO be tasked with enforcement of these payments.

### **Other measures**

As outlined elsewhere in this submission, AIST believes that opportunities exist to improve Australia's superannuation coverage. We believe that the ATO has a role to play in administration of a number of these, including:

1. Working with the Fair Work Ombudsman to reduce instances of sham contracting and the avoidance of superannuation contribution as a result.
2. Reaching out to the self-employed, in conjunction with ASIC, to better communicate the benefits of superannuation contributions.

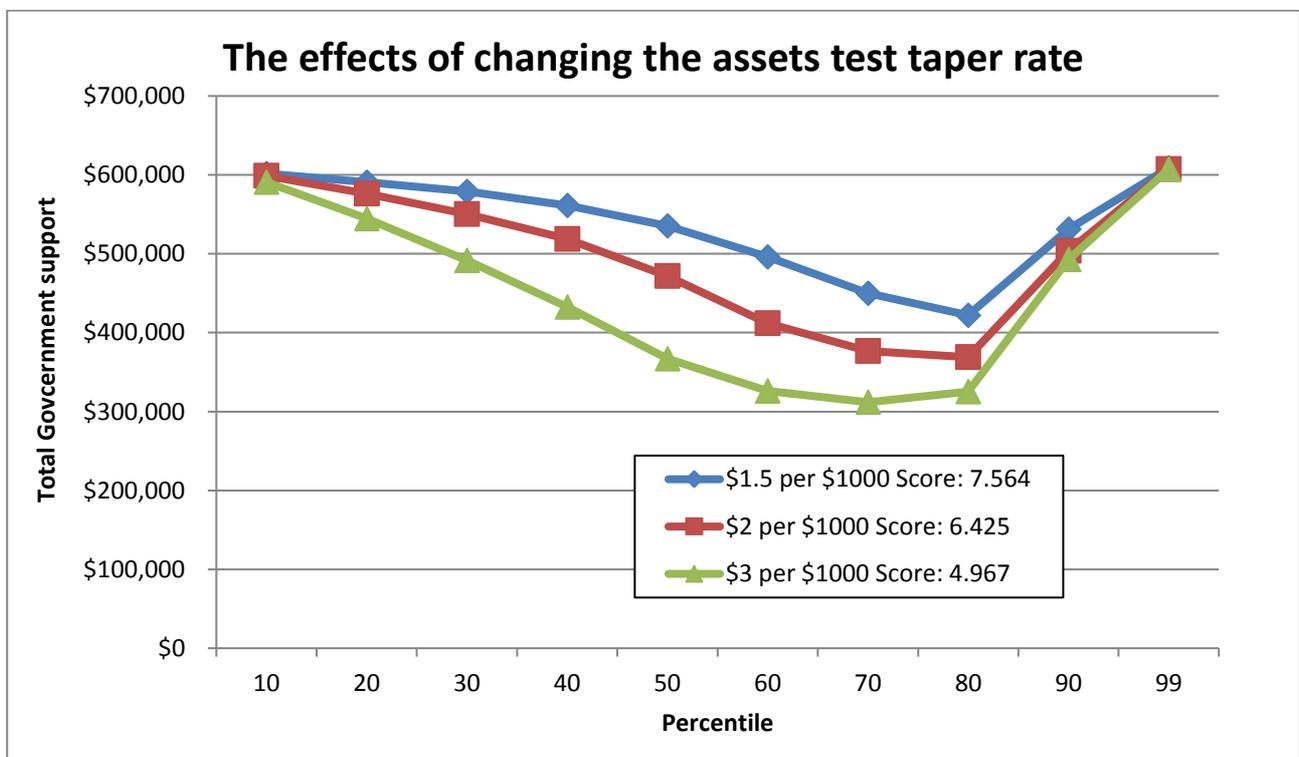
## Improve targeting of the Age Pension

### Reduce assets test taper rate to \$2

The changes made by the government as part of the 2015-16 Budget (which became effective as of 1 January 2017) substantially reduces net Age Pension payments to the majority of recipients. The modest increase to the lower assets test threshold does not offset the much more significant effect of increases to the taper rate from \$1.50 to \$3.00 per fortnight. This will reduce the partial Age Pension significantly for low and middle-income households.

Over the long run, there will be more people affected on below average incomes than above. A fairer model would, in conjunction with the package of reforms outlined above, set an asset taper rate of \$2.00, with the asset-free area being set at the midpoint between the old levels and new levels. This achieves fiscal savings that are at the midpoint between the old and new asset test.

As previously noted, the AIST-Mercer Super Tracker presently ranks ‘fairness’ of the superannuation system as having the lowest of the 10 Tracker scores. In 2016, AIST and Mercer tested different taper rates using the AIST-Mercer Super Tracker and found that the fairness score in the tracker reduces substantially as the assets test taper rate is increased. With the fairness score at that time being 7.6, the increase from \$1.50 to \$3.00 would reduce the fairness score to 5.0. On the other hand, increasing the taper rate up to \$2.00 would increase fairness to 6.4.



Source: AIST and Mercer

AIST recommends that the assets test taper rate be increased to \$2.00 to improve the fairness of Australia's retirement income system.

### **Concern over higher Age Pension eligibility age**

AIST does not support any further raising of the Age Pension eligibility age beyond age 67. Australia's retirement income policies must recognise that many individuals will have a different work pattern and may not be in a position to work until age 70. Research conducted by the Australian Centre for Financial Studies and AIST in 2014<sup>23</sup> found that up to 40% of older Australians do not get to choose when they retire due to a range of factors, notably age discrimination, ill health, poor English proficiency and caring demands. Further research into involuntary retirement should be prioritised and more policies are needed to address work issues impacting on older, vulnerable Australians.

For similar reasons, we do not support any changes to super preservation age levels (which currently range from 55 to 60 years). Raising the age at which people can access their super could see the level of involuntary retirees blow out to more than half the Australian workforce. Maintaining the preservation age for those who retired involuntarily could play an important role in funding the period between when involuntary retirement occurs and the Age Pension is available. We note that in previous reviews, the Productivity Commission has acknowledged that changing the preservation age won't help those who currently retire involuntarily and will lead to only a marginal 2 per cent increase in the overall workforce participation rate. We question the benefit of such a policy change that will only make it harder for a significant number of vulnerable older Australians to access their own super savings.

Additional research conducted by the Australian Centre for Financial Studies and AIST in 2013<sup>24</sup> noted that scope exists for measures that could be undertaken in order to provide incentives for those who wish or are able to defer retirement, including modifying the means test, or offering actuarially fair compensation for the deferral of pension income.

AIST recommends that the proposed increase in the Age Pension age to 70 be formally ruled out.

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<sup>23</sup> Refer Australian Centre for Financial Studies (2014), cited in a previous footnote.

<sup>24</sup> Davis, K. (2013). *The Age of Retirement*. An independent report prepared for AIST by the Australian Centre for Financial Studies. [online] Melbourne: Australian Institute of Superannuation Trustees and Australian Centre for Financial Studies. Available at: <http://tinyurl.com/zsknmbt> [Accessed 19 Jan. 2017].

### **Increase assistance for First Australians**

#### **Increase funding for identification schemes for First Australians**

There are a number of issues that compound disadvantage in Australia and AIST believes that more should be done to improve the economic participation of our First Australians. Financial inclusion is only achieved with access to appropriate financial services. Our work in the Indigenous superannuation space has highlighted the problems that exist for many Aboriginal and Torres Strait Islander people with regard to proving or verifying their identity for the purposes of claiming their own retirement savings.

We therefore ask that the Australian government fund the Indigenous ID card initiatives such as the Larrakia Nation card, and encourage the government to support the development of other card schemes around Australia to assist First Australians with identification concerns.

#### **Improve the availability of financial counselling services**

Economic participation and financial inclusion are also dependent on education and access to appropriate services. The funding of financial counsellors, especially in areas with high density Aboriginal or Torres Strait Islander populations are a vital component of financial inclusion.

AIST therefore submits that funding for financial counselling services be increased to provide Aboriginal and Torres Strait Islander people with appropriate guidance on accessing information about their personal finances.

## Appendix: Payments to employees considered as part of Superannuation Guarantee Ruling SGR 2009/2

Payment no.	Payments to an employee in relation to...	Salary or wages?	OTE?
<b>Awards and agreements</b>			
1	A simple overtime situation	Yes	No
2	Overtime hours - agreement prevailing over award	Yes	No
3	Agreement supplanting award removes distinction between ordinary hours and other hours	Yes	Yes
4	No ordinary hours of work stipulated	Yes	Yes
5	Casual employee -		
	<i>shift-loadings</i>	Yes	Yes
	<i>overtime payments</i>	Yes	No
6	Casual employee whose hours are paid at overtime rates due to a 'bandwidth' clause	Yes	No
7	Piece-rates - no ordinary hours of work stipulated	Yes	Yes
8	Overtime component of earnings based on 'hourly driving rate' formula stipulated in award	Yes	No
<b>Allowances</b>			
9	Allowance by way of unconditional extra payment	Yes	Yes
10	Expense allowance expected to be fully expended	No	No
11	Danger allowance	Yes	Yes
12	Retention allowance	Yes	Yes
13	Hourly on-call allowance in relation to ordinary hours of work for doctors	Yes	Yes

Payment no.	Payments to an employee in relation to...	Salary or wages?	OTE?
<b>Payment of expenses</b>			
14	Reimbursement	No	No
15	Petty cash	No	No
16	Reimbursement of travel costs	No	No
17	Payments for unfair dismissal	No	No
18	Workers' compensation -		
	<i>Returned to work</i>	Yes	Yes
	<i>Not working</i>	No	No
<b>Leave payments</b>			
19	Annual leave	Yes	Yes
<b>Termination payments</b>			
20	Termination payments -		
	<i>In lieu of notice</i>	Yes	Yes
	<i>Unused annual leave</i>	Yes	No
<b>Bonuses</b>			
21	Performance bonus	Yes	Yes
22	Bonus labelled as ex-gratia but in respect of ordinary hours of work	Yes	Yes
23	Christmas bonus	Yes	Yes
24	Bonus in respect of overtime only	Yes	No

Table 2