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Performance Audit

Promoting Compliance with Superannuation Guarantee Obligations

Australian Taxation Office

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Office of the Auditor-General for Australia



Canberra ACT
3 June 2015

Dear Mr President
Dear Madam Speaker

The Australian National Audit Office has undertaken an independent performance audit in the Australian Taxation Office titled *Promoting Compliance with Superannuation Guarantee Obligations*. The audit was conducted in accordance with the authority contained in the *Auditor-General Act 1997*. I present the report of this audit to the Parliament.

Following its presentation and receipt, the report will be placed on the Australian National Audit Office's website—<http://www.anao.gov.au>.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ian McPhee'.

Ian McPhee

The Honourable the President of the Senate
The Honourable the Speaker of the House of Representatives
Parliament House
Canberra ACT

AUDITING FOR AUSTRALIA

The Auditor-General is head of the Australian National Audit Office (ANAO). The ANAO assists the Auditor-General to carry out his duties under the *Auditor-General Act 1997* to undertake performance audits, financial statement audits and assurance reviews of Commonwealth public sector bodies and to provide independent reports and advice for the Parliament, the Australian Government and the community. The aim is to improve Commonwealth public sector administration and accountability.

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Abbreviations

AAT	Administrative Appeals Tribunal
APRA	Australian Prudential Regulation Authority
ASIC	Australian Securities and Investments Commission
ATO	Australian Taxation Office
CEM	Compliance effectiveness methodology
DPN	Director penalty notice
EN	Employee notification
FWO	Office of the Fair Work Ombudsman
ICP	Integrated core processing
IFCC	Industry Funds Credit Control
IQF	Integrated quality framework
NFA	No further action
PAYG	Pay as you go
OTE	Ordinary time earnings
PBS	Portfolio Budget Statements
RAB	Revenue Analysis Branch
RAPT	Risk assessment and profiling tool
RESC	Reportable employer superannuation contributions
SG	Superannuation guarantee

Glossary

Micro business	Defined by the ATO as a business having less than five employees and total business income between \$1 and \$2 million.
Members contributions statement	An annual statement that APRA-regulated funds are required to lodge with the ATO by 31 October each year reporting employer, personal and other superannuation contributions received for all members in the previous financial year.
Ordinary time earnings	Employees' earnings for their ordinary hours of work, including over-award payments, bonuses, commissions, allowances and certain paid leave.
Pay as you go withholding	A system that collects tax from the payments businesses make to employees and other businesses so they can meet their tax liabilities.
Phoenix activities	Instances where a company deliberately enters into liquidation to avoid paying expenses such as creditors, taxes and employee entitlements. The directors transfer assets to a new entity, and continue operating the same or a similar business.
Reportable employer superannuation contributions	Contributions made by an employer on behalf of an employee, such as salary sacrifice contributions or extra super contributions. Contributions not regarded as reportable employer superannuation contributions are Superannuation Guarantee contributions or contributions made under a collectively negotiated industrial agreement and voluntary after-tax income contributions.

Superannuation Guarantee charge	Consists of: the amount of Superannuation Guarantee not contributed (the 'shortfall'); an interest component (10 per cent a year at April 2015); and an administrative fee of \$20 per employee per quarter. The employer is required to lodge a Superannuation Guarantee charge statement with the ATO, calculate the amount of Superannuation Guarantee charge payable, and pay the Superannuation Guarantee charge by the due date for the relevant quarter. The ATO forwards the shortfall and interest component (10 per cent) to the employee's superannuation fund.
Superannuation Guarantee contributions	The amount an employer must contribute in superannuation on behalf of their eligible employees. Since July 2014, the minimum Superannuation Guarantee contribution is 9.5 per cent of an employee's ordinary time earnings.
Superannuation Guarantee shortfall	The amount of Superannuation Guarantee underpaid or not paid by the employer.
Sham contracting	Occurs where an employer attempts to disguise an employment relationship as an independent contracting arrangement. This is usually carried out for the purposes of avoiding responsibility for employee entitlements.
Small business	Defined by the ATO as a business having less than 20 employees and a total business income between \$2 million and \$10 million.
SuperReforms	Suite of government reforms introduced from July 2011 with the aim of providing a more efficient superannuation system.
SuperStream	Part of SuperReforms, package of proposals for improving the processing of everyday superannuation transactions.

Summary and Recommendations

Summary

Introduction

1. The Superannuation Guarantee (SG) Scheme was introduced in 1992 to reduce, over time, reliance on the age pension as a means of funding the retirement of individuals and to provide a higher standard of retirement living.¹ The Scheme is one of the three pillars of Australia's retirement income system², and it is envisaged that the proportion of the population who receive part-rate, rather than the full, age pension will increase as a result of the system maturing.
2. Since 1 July 2014, the minimum SG contribution is 9.5 per cent of an employee's ordinary time earnings.³ In 2014, some 846 000 employers were required to make SG payments on behalf of approximately 11.7 million employees to around 548 000 superannuation funds.⁴ Total superannuation contributions for the year ending December 2014 were \$100.6 billion, of which employer contributions totalled \$77 billion.⁵
3. The *Superannuation Guarantee (Administration) Act 1992* (the SG Act) sets out the administrative arrangements for the operation of the SG Scheme. The Commissioner of Taxation is responsible for the day to day administration of the SG Act, and the role of the Australian Taxation Office (ATO) is to 'support employers to comply with their superannuation guarantee obligations and identify and deal with those who do not.'

1 Department of the Treasury, *A Super Charter: Fewer changes, better outcomes*, July 2013, p. 8.

2 The other two pillars are: voluntary superannuation contributions encouraged by tax concessions; and the means tested and publicly funded age pension, which acts as a safety net for those Australians who have been unable to accumulate sufficient resources for their retirement.

3 For the purposes of calculating an employee's SG contribution, ordinary time earnings are the salary or wages paid to employees for their ordinary hours of work.

4 Self-managed superannuation funds account for 99.9 per cent of all superannuation funds. Australian Prudential Regulation Authority (APRA), *Quarterly Superannuation Performance December 2014*, issued 19 February 2015, p. 7. For number of employers, Commissioner of Taxation, *Annual Report 2013–14*, p. v; and number of employees, Australian Bureau of Statistics, *Labour Force Australia January 2015*, available from <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>> [accessed 24 February 2015].

5 APRA, *Quarterly Superannuation Performance December 2014*, issued 19 February 2015, p. 7.

Superannuation Guarantee Scheme operation

4. The SG Scheme operates largely without intervention from the ATO, with employers making SG contributions to the superannuation fund of the employee's choice. Where employers do not pay adequate SG contributions to the employee's nominated fund on time, they may be liable for a SG charge. The SG charge consists of: the amount of superannuation not contributed (the 'shortfall'); an interest component (currently 10 per cent a year); and an administrative fee of \$20 per employee per quarter. The employer is required to lodge a SG charge statement with the ATO, calculate the amount of SG charge payable, and pay the SG charge by the due date for the relevant quarter. The ATO forwards the shortfall and interest component (10 per cent) to the employee's superannuation fund.

5. An employee who believes that SG contributions have not been paid can lodge an enquiry with the ATO (an employee notification). The ATO aims to investigate all employee notifications and, where it considers appropriate, audits employers to verify that correct SG payments have been made. In addition to responding to employee notifications, the ATO initiates a range of compliance activities to encourage compliance and to detect and address employer non-compliance. Within the ATO, the Superannuation business line, which is part of the Compliance Group, administers aspects of the superannuation system, including the SG Scheme.⁶

6. The SG Scheme's operation directly involves other stakeholders, particularly superannuation funds. Among these, industry funds⁷ hold almost 40 per cent of all member accounts and many have a responsibility to verify employers' compliance with award requirements, which count towards SG obligations. These funds often have intervention strategies to pursue and collect contributions in arrears, and employ debt collection services.

6 The Department of the Treasury has responsibility for superannuation and retirement savings policy, and APRA supervises regulated superannuation funds, other than self-managed superannuation funds (which are supervised by the ATO).

7 Superannuation funds are broadly categorised into large funds, regulated by APRA, and self-managed superannuation funds, regulated by the ATO. APRA-regulated funds include retail, industry, public sector and corporate funds. Industry and public sector funds are 'not for profit'. Retail and corporate funds aim to retain some profit.

Administrative complexity of the Superannuation Guarantee Scheme

7. 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 inequitable⁸;
- 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.

8. These challenges can underpin employer non-compliance with their SG obligations. The ATO has analysed the main characteristics of non-compliance and considers it to be more prevalent among micro and small businesses.⁹ It may also form part of a broader picture of non-compliance, with employers also failing to withhold employee's income tax, paying wages in cash

8 ATO, *Superannuation Guarantee Review*, Report to the Department of the Treasury, May 2014. The report describes, as an illustration, the case of the owner of a motel employing 25 to 30 people who had fully paid all SG contributions, albeit with a delay of a few days or months each quarter. The owner was found liable to pay almost \$80 000 in nominal interest accrued over four years and over \$10 000 in administrative fees.

9 Micro businesses are defined by the ATO as businesses with less than five employees and an annual total business income between \$1 and \$2 million; and small businesses as having less than 20 employees and an annual total business income between \$2 million and \$10 million.

or incorrectly treating employees as contractors.¹⁰ The industry sectors where these practices occur more frequently include construction, transport, accommodation and hospitality. The ATO considers that employer non-compliance with SG obligations is primarily driven by business difficulties affecting cash flow, resulting in employers using SG contributions to fund other business operating expenses. The ATO has also identified a level of disengagement with the SG Scheme among some employers, where SG is given a low priority.

Audit objective and criteria

9. The objective of the audit was to assess the effectiveness of the ATO's activities to promote employer compliance with Superannuation Guarantee obligations.

10. To form a conclusion against this objective, the Australian National Audit Office (ANAO) adopted the following high-level criteria:

- administration and compliance activities are supported by effective management arrangements;
- compliance risks are identified through effective risk assessment processes and a comprehensive compliance strategy is in place;
- compliance activities, associated objections and debt collection arrangements are conducted effectively; and
- performance monitoring demonstrates the extent to which outcomes and objectives have been achieved.

Overall conclusion

11. The Superannuation Guarantee (SG) Scheme was designed to help Australians, particularly lower paid workers, enhance their incomes and improve their living standards in retirement. As the system matures, it is also expected to supplement or reduce reliance on the age pension.¹¹ The age pension is the Commonwealth's largest spending programme, with annual

10 The practice of incorrectly treating employees as contractors is referred to as 'sham contracting', which is usually carried out to avoid responsibility for employee entitlements, including SG.

11 Department of the Treasury, *2015 Intergenerational Report*, March 2015, p. xix.

expenditure of \$39.5 billion in 2014, growing at 3.7 per cent per year in real terms to 2023–24.¹²

12. For the SG Scheme to operate effectively, the ATO has an important role to play, supporting employers to comply with their SG obligations and dealing with those that do not. The ATO carried out a wide range of activities to promote compliance and help employees and employers to understand their SG rights and obligations. These activities include responding to over 18 000 employee notifications, and conducting 5000 to 6000 audits of employers at risk of non-compliance with their SG obligations every year between 2010–11 and 2013–14.¹³ As a result of these compliance activities, the ATO has raised on average \$640 million each year in SG charge liabilities, collecting approximately half of this amount.

13. Overall, the ATO's administration of the Superannuation Guarantee Scheme has been generally effective, particularly having regard to the scale of the Scheme and substantial flow of legislated revenue generated. Nevertheless, to better target its activities and more effectively promote employer compliance with SG obligations, the ATO should gain a greater understanding of the levels of non-compliance with SG obligations across industry sectors and types of employers. This is important given the potential impact of non-compliance on the retirement income of employees, and the role of the Scheme in reducing reliance on the age pension.

14. The ATO's public assessment is that, 'overall employers demonstrate high levels of voluntary compliance'.¹⁴ However this view, based largely on total employer contributions as a proportion of total salary and wages, does not adequately reflect the level of non-compliance in specific groups of employers and industry sectors. The ATO's own internal risk assessment indicates that as many as 11 to 20 per cent of employers could be non-compliant with their SG obligations, and that non-compliance is 'endemic'¹⁵, especially in small businesses and industries where a large number

12 National Commission of Audit, *Towards Responsible Government*, Appendix Volume 1, p. 162.

13 For this audit, the ANAO focused on these four years, 2010–11 to 2013–14.

14 Commissioner of Taxation, *Annual Report 2013–14*, pp. 19 and 67.

15 'Endemic' is defined by the ATO as pervasive through time and/or populations.

of cash transactions and contracting arrangements occur.¹⁶ Importantly, this non-compliance primarily affects lower paid employees and those are most likely to rely on the age pension in later years. While the ATO has conducted an evaluation of the effectiveness of its SG compliance strategy at regular intervals (every year between 2010–11 and 2013–14), the most recent of these evaluations, completed in 2014, was not sufficiently robust to enable a reliable assessment of the ATO's effectiveness in addressing the risks of non-compliance with SG obligations.

15. The ATO has established a number of forums to consult with superannuation industry stakeholders. As previously discussed, these stakeholders often play an active role in pursuing non-compliance. There is scope for the ATO to explore the more extensive use of compliance information retained by some of these stakeholders (such as the Office of the Fair Work Ombudsman¹⁷), including the larger superannuation funds (provided these funds are willing to share their information¹⁸). A closer collaboration would offset some of the disadvantages of the SG Scheme operating largely without intervention from the ATO, and could improve the ATO's ability to assess compliance risks and detect non-compliance earlier.

16. In encouraging compliance, the ATO has predominantly focused on communicating recent legislative changes¹⁹ affecting SG. Giving greater emphasis to explaining the role the ATO plays in dealing with non-compliance would improve community perceptions that the ATO is not active in addressing non-compliance with SG obligations. In addition, while a range of education resources are available to employees, employers and superannuation stakeholders, there would be merit in improving the useability of some of the electronic tools accessible from the ATO website.²⁰

16 This view is shared by a number of superannuation stakeholders consulted by the ANAO for this audit. For example, Cbus, one of the largest industry funds, estimated that non-compliance with SG payments totalled \$2.5 billion in 2012 alone, with approximately 650 000 employees missing out on some or all of their superannuation contributions each year (Cbus submission to ANAO, based on research in 2014 commissioned by Cbus from Tria Investment Partners).

17 One of the main roles of the Fair Work Ombudsman is to ensure compliance with Australian workplace laws.

18 While the ANAO consultations indicated that these entities are generally willing to collaborate more closely with the ATO on compliance issues, the ATO advised that it is not always the case.

19 SuperReforms (a suite of government reforms introduced from July 2011 with the aim of providing a more efficient superannuation system) and increase in SG rate.

20 In particular, the tool that employees can use to lodge a notification and the tool used by employers to lodge their SG charge.

17. In dealing with non-compliance, the ATO has dedicated most of its Superannuation business line's compliance resources in recent years to addressing the 18 000 employee notifications it receives on average annually. The ATO has regularly met and often exceeded its timeliness standards and has improved the way it informs employees of the progress of their notification. Audits are undertaken by both the Superannuation business line and the Small Business and Individual Taxpayers business line.²¹ These audits have been successful in identifying non-compliant employers and raising unpaid SG, with strike rates²² in excess of 70 per cent. Given this success rate, the commonalities in risk profiles, and to optimise compliance resources, there would be benefit in better aligning the SG compliance strategy with the compliance activities undertaken by the Small Business and Individual Taxpayers business line. Within this context, there is also scope to increase the cooperation with other relevant ATO business lines to include SG compliance as part of their audit activities.

18. The amount of SG charge collected by the ATO represented approximately half the amount it raised in liabilities (in 2013–14, \$844 million in SG charge was raised, and \$395 million was collected). At 30 June 2014, SG debt reached over \$1 billion and has been growing at a rate of 12 per cent per annum since 2011–12. Two main factors affect SG charge collections: delayed compliance intervention and employer insolvencies. Since June 2012, the ATO has been able to issue Director Penalty Notices (DPNs), which make company directors personally liable for unpaid SG amounts. While the ATO described this measure as a powerful tool to enhance employer compliance, especially in cases of insolvencies, it issued notices to only 219 insolvent companies with a SG charge debt in 2013–14. Given the ATO was unable to advise the size of the relevant population (directors of insolvent companies) that should have received a DPN, it was not possible to evaluate the effectiveness of this new measure.

19. The ATO is implementing a number of initiatives to further strengthen the effectiveness of its SG compliance strategy, including the *Tailoring the*

21 The Superannuation business line conducts around 660 audits annually. The Small Business and Individual Taxpayers business line carries out around 5000 checks of SG compliance every year, as part of its broader program of audits of employer obligations.

22 The strike rate is the proportion of audits that are successful in identifying non-compliance with SG obligations and raise a SG liability.

Employer Experience for Superannuation Guarantee project²³ and a new debt collection strategy to recover debt earlier and more effectively²⁴. To further support the ATO's effort, the ANAO made four recommendations aimed at better promoting SG compliance. The recommendations relate to: better analysing non-compliance and further engaging with superannuation stakeholders; emphasising the ATO's enforcement role; better coordinating compliance activities within the ATO; and evaluating the effectiveness of compliance activities.

Key findings by chapter

Assessing Overall Compliance Risk (Chapter 2)

20. As mentioned previously, the ATO stated in its 2013–14 Annual Report that, 'overall, employers continue to demonstrate high levels of voluntary compliance with their superannuation guarantee obligations'.²⁵ This assessment was largely based on two key measures: overall employer SG contributions exceeding the statutory percentage of salary and wages paid (9.5 per cent in 2013–14); and employee notifications received by the ATO being low as a proportion of all employees (less than 0.02 per cent in 2013–14).

21. The ATO's assessment of the rate of SG contributions is subject to limitations, including that it:

- does not account for the fact that some employers contribute higher than legislated levels of SG and others pay less or no contributions;
- does not capture data relating to employees receiving no SG contributions at all, for instance because they are in a sham contracting arrangement; and
- is based on data from third-party sources (primarily, the Member Contribution Statement provided to the ATO by superannuation funds)

23 The project, scheduled for implementation in July 2015, aims to apply differentiated treatments to employee notifications, taking into account the employers' previous and current compliance history and their specific circumstances.

24 The ATO advised that in October 2014 it commenced the phased implementation of a new debt collection strategy that places greater emphasis on the employer's compliance history, with stronger action promptly taken if the employer presents with a history of non-compliance. In May 2015, this new strategy had not yet been applied to DPN treatments.

25 Commissioner of Taxation, *Annual Report 2013–14*, pp. 19 and 67.

and employer self-reporting (through the reportable employer superannuation contributions²⁶ facility), which do not align sufficiently well to allow accurate matching.

22. In relation to the low proportion of employee notifications as an indicator of employer compliance with SG obligations, research commissioned by the ATO demonstrates that employees are reluctant to complain to the ATO about unpaid SG; and the measure does not account for the complaints to, and the compliance work conducted by, other superannuation stakeholders.

23. Further, the ATO's public assessment of the risk of non-compliance with SG obligations is at odds with many external superannuation stakeholders' views that employer non-compliance is likely to be widespread in small businesses and in businesses where a large number of cash transactions and contracting arrangements occur. These are also the industries where employment is the most transient, where salaries are more likely to be low, and the workforce young, employed on a part-time or casual basis, or from migrant backgrounds and with low levels of skills and literacy. The ATO's public statement also contradicts its internal risk assessment that estimated that between 11 and 20 per cent of employers were not meeting their SG obligations, and that non-compliance is endemic.

24. Many superannuation industry external stakeholders (including industry superannuation funds, superannuation debt collection services and the Fair Work Ombudsman) have early visibility of possible non-compliance and conduct compliance activities. Developing a closer relationship with these stakeholders would enhance the ATO's risk identification processes and allow the ATO to more promptly and effectively address non-compliance.²⁷ There is also potential for the ATO to increase the use of external compliance information sources, in order to undertake a more complete analysis of non-compliance with SG obligations.

26 Reportable employer superannuation contributions are those made by an employer on behalf of an employee, such as salary sacrifice contributions or extra super contributions. Contributions not regarded as reportable employer superannuation contributions are SG contributions or contributions made under a collectively negotiated industrial agreement.

27 While the superannuation industry entities consulted by the ANAO indicated that they would be willing to cooperate more closely with the ATO on compliance issues, the ATO advised that superannuation funds have not been forthcoming in providing information to the ATO about non-compliant employers.

25. The ATO's current work on estimating the 'superannuation gap'²⁸ should improve the ATO's capacity to assess and identify non-compliance with SG obligations overall. However, there is scope for the ATO to revise its assessment in the groups of employers and industry sectors most at risk.

Promoting Voluntary Compliance (Chapter 3)

26. The ATO website is the main repository of publicly available information on taxation and superannuation matters, and includes general facts, technical rulings and law administration practice statements. Employers and employees can access the information about their obligations and entitlements through a fast and simple navigation of the website. As such, the website represents a valuable resource and also an important channel for disseminating other forms of communication, such as media campaigns.

27. The website also enables access to four online decision tools and calculators that are designed to assist employers and employees to determine and manage their SG obligations and entitlements. Two of these tools, the employer SG charge statement and calculator tool, and the employee SG calculator²⁹, were relatively difficult and time consuming to use, and could act as a deterrent to both employers and employees in engaging with the ATO to ensure their SG rights and obligations are met.

28. Overall, the ATO's education strategies and campaigns recognise the critical role played by employers and key stakeholders in the effective operation of the SG Scheme. Also, the strategies focusing on specific employee population groups are appropriately informed by market research and active compliance work. Most recent education messages have focussed on the impact of the SuperReform³⁰ changes for employers, and on the increase in the rate of SG. While not specifically targeting SG compliance, these campaigns can indirectly contribute to raising awareness of SG obligations and entitlements among employers and employees.

28 The 'superannuation gap' refers to the difference between SG contributions due and SG paid. The ATO advised that it has commenced, during the course of this audit, work to estimate the 'superannuation gap', as part of the wider internal project to measure the 'tax gap'.

29 The employer SG charge statement and calculator tool enables employers to calculate their SG charge liability and lodge their SG charge statement; and the employee SG calculator helps employees establish whether their employer is paying the correct SG amounts and lodge an employee notification.

30 'SuperReforms' are a suite of government reforms introduced with the aim of providing a more efficient superannuation system.

29. Market research conducted by the ATO and the ANAO's consultation with superannuation stakeholders have identified that while most employers now have a good understanding of their SG obligations, they:

- are not generally aware of the role of the ATO in relation to the operation of the SG system;
- do not view the ATO as the primary source of information on SG; and
- are not concerned about being penalised in the event of non-compliance.

30. There is scope to further strengthen, in future marketing and education initiatives, messages aimed at raising employer and employee awareness of the ATO's role in addressing non-compliance with SG obligations.

Addressing Non-Compliance (Chapter 4)

31. Under the SG compliance strategy, active compliance work comprises two main tasks: responding to employee notifications (ENs); and selecting and conducting proactive audits (that is, audits based on information from sources other than ENs). When employers are identified as non-compliant with their SG obligations, the ATO raises and attempts to collect the SG charge.

Responding to employee notifications

32. Between 2010–11 and 2013–14, the ATO received, on average, over 18 000 ENs annually. Approximately half (46 per cent)³¹ the ENs finalised by the ATO during this period were verified as presenting a compliance issue and led to an SG charge being raised.

33. Of the 54 per cent of ENs finalised as 'no further action', around one in three were finalised due to employer insolvency, which meant that although employers were non-compliant and an SG amount was due, it was likely to remain unpaid. In one in four ENs, the employers had paid the SG contribution late or the ATO did not identify that they had an SG obligation.

34. Overall, the ATO has met and often exceeded its timeliness standards over the past several years, reaching a decision within four months for 70.7 per cent of ENs and within 12 months for 99.8 per cent of ENs. However, these standards could be more meaningful if they included, in addition to the time taken by the ATO to reach a decision, the time required for ENs to be

31 Based on 52 242 ENs finalised between 2009–10 and 2012–13.

finalised, that is for the notifier to know whether or not any potential unpaid SG has been recovered (this took more than 300 days for 30 per cent of ENs).

35. Given the large proportion of ENs finalised as 'no further action' the implementation of the 2015 ATO project *Tailoring the Employer Experience for SG* is timely and presents potential for improving the ATO's efficiency in responding to ENs.³²

Conducting proactive audits

36. On average each year between 2010–11 and 2013–14 the ATO has raised \$176 million in SG liabilities, as a result of conducting:

- 660 audits focusing solely on compliance with SG obligations, carried out by the Superannuation business line; and
- 5000 audits, undertaken by the Small Business and Individual Taxpayers business line, of compliance with employer obligations more broadly, and including SG.³³

37. These two types of audits presented distinct characteristics and results. In particular, there were fewer SG-only audits, which took longer to complete (34 per cent of the SG-only audits were completed within four months or less, compared with 60 per cent of the audits of employer obligations more broadly); and had a lower strike rate (for 2013–14, 62 per cent of the SG-only audits were successful in identifying non-compliance with SG obligations, compared with 88 per cent of employer obligations audits). However, the SG-focused audits raised a much higher amount of liability, on average, per audit (for 2013–14, over \$116 000 compared with approximately \$36 000 for employer obligations audits), and the total direct time spent on each case was considerably less (for 2013–14, 24 hours compared with 48 hours for employer obligations audits).

38. There is a strong correlation between non-compliance with SG obligations and non-compliance with employer obligations more broadly. In 2013–14, 88 per cent of employers selected by the ATO for an employer

32 Under this approach, the employers' compliance history and their specific circumstances will determine the type of action applied by the compliance officer, with a 'lighter' action for employers with a history of compliance, and a faster and heavier intervention for employers identified as repeat offenders.

33 Employer obligations include SG and Pay As You Go withholding tax, fringe benefits tax, foreign and non-resident withholding tax and contractor payment.

obligation audit were found to also be non-compliant with their SG obligations. The ATO has also identified that non-compliance is more prevalent in small and micro businesses, particularly those involved in cash transactions, sham contracting and phoenix activities.³⁴ Given these similarities, there is scope for the Superannuation business line to more closely align its SG active compliance strategy with the active compliance activities conducted by the Small Business and Individual Taxpayer business line, with a view to increasing the scale of, and returns from, audits addressing SG risks. More broadly, greater collaboration with other relevant ATO business areas to include SG in their compliance work would help to ensure that SG compliance issues are addressed in a more effective and timely manner and across a wider range of employers.

Collecting and transferring the SG charge

39. Between 2010–11 and 2013–14, the ATO raised on average each year \$640 million in SG charge liabilities. Around two-thirds of these liabilities (\$431 million) were from employers voluntarily lodging an SG charge statement. The balance (\$210 million) was the result of compliance work conducted by the ATO through responses to ENs and proactive audits. The ATO collected approximately half (\$331 million) of the SG charge liabilities raised, and a significant proportion (\$54 million or 15 per cent on average) of SG payments made to superannuation funds was returned to the ATO.³⁵

40. The SG debt on hand reached \$1.021 billion in 2013–14, with an average annual growth of 12 per cent between 2010–11 and 2013–14. The main factors affecting ATO's ability to recover the SG charge were delayed compliance interventions and employers becoming insolvent (in 2013–14, around half of the debt on hand was due to insolvencies). As previously discussed, issuing DPNs more systematically and promptly after a suitable case is identified would increase the likelihood of recovering unpaid SG.

34 Fraudulent phoenix activity occurs when a company deliberately enters into liquidation to avoid paying expenses such as creditors, taxes and employee entitlements. The directors transfer assets to a new entity, and continue operating the same or a similar business.

35 When a superannuation fund receives a SG charge amount from the ATO but cannot locate the account holder, the amounts are returned to the ATO. The ATO retains these amounts until they can be transferred to a superannuation fund or retirement savings account.

Quality Assurance, Review Process and Evaluation (Chapter 5)

41. In addition to routine quality checks by approving officers at key decision points, the ATO applied, until June 2014, a quality assurance framework that aimed to continuously improve and assure the consistency and correctness of administrative decisions made by staff (the Integrated Quality Framework—IQF).³⁶ The IQF assessed 424 closed superannuation audits between 2010–11 and 2013–14, detecting a range of technical and staff capability issues and undertaking corrective actions that resulted in the improvement of most quality measures. Two measures continued to be below the quality benchmark in 2013–14, ‘transparency’ (including inadequate record keeping) and ‘integrity’ (including insufficient adherence to security procedures when using email and proof of identity checks).³⁷ The ATO advised that these issues were present across all business lines and a continuing theme under the new quality framework.

42. The ATO’s review process allows employers to disagree with a decision made by the ATO in relation to their SG charge liabilities by asking for an amendment or making an objection to the ATO’s assessment.³⁸ If they still disagree with the ATO’s review outcome, employers can lodge an appeal to the Administrative Appeals Tribunal, the Federal Court of Australia or the High Court of Australia.

43. Between 2010–11 and 2013–14, the ATO completed 5694 amendments and objections relating to SG charge (1400 on average each year). It has achieved its timeliness standard (completion within 56 days) in 89 per cent of cases (against a benchmark of 70 per cent). More than two in three (70 per cent) of these amendments and objections were allowed in part or in full. The main reason for this outcome was the provision of additional facts and evidence by the employer after the completion of a compliance case.

36 From 1 July 2014, the ATO replaced the IQF with ‘ATO Quality’. The new framework aims to simplify and streamline the ATO’s approach to quality measurement. The ANAO did not review this new framework as it had not been substantially applied to SG cases at the time of audit fieldwork.

37 ‘Transparency’ refers to decisions that are well explained, supported with reasons that are clear and accurate. It also covers the provision of information to clients on their review rights. ‘Integrity’ refers to decisions that reflect ATO’s conformity to the Taxpayers’ Charter principles (for example, respect of client privacy).

38 If employers want to correct a mistake or omission on an SG charge statement, they can ask for an amendment to the ATO’s assessment. If employers want to dispute the law or the facts the ATO used to come to the decision, they can lodge an objection.

44. During the same period, 108 appeals were made to the Administrative Appeals Tribunal (98 appeals), the Federal Court or the High Court (10 appeals). Of these, 46 appeals were settled and 44 withdrawn or dismissed. Fourteen were decided in part or in full against the employer, and four against the ATO.

45. Complaints are another form of feedback that employers and employees can use if they are dissatisfied with an ATO decision or administrative process. Between 1 January 2012 and 31 October 2014, the ATO received 553 complaints related to SG matters (less than one per cent of the 30 000 complaints the ATO received each year over this period). This relatively low number contrasts with Commonwealth Ombudsman's information indicating that superannuation was the fourth most common theme of complaints received about the ATO between 2011–12 and 2013–14, representing some 10 per cent of ATO complaints. Most complaints made to the Ombudsman related to unpaid SG contributions and were typically made (as were complaints lodged directly with the ATO) by individuals concerned about delay, lack of information or uncertainty about the ATO's progress towards collecting unpaid superannuation; and small business employers disagreeing with audit actions.

46. Since 2008, the ATO has used a compliance effectiveness methodology to measure the effectiveness of its compliance strategies in treating specific compliance risks. The ATO has applied this methodology to evaluate the effectiveness of the SG compliance strategy at regular intervals (every year between 2010–11 and 2013–14), with the last completed evaluation conducted in August 2014. However, the absence of reliable performance indicators and a clear conclusion reduced the usefulness of this evaluation to improve the SG compliance strategy and address compliance risks.

Summary of entity response

47. The proposed audit report was provided to the ATO. The ATO's summary response to the proposed report is provided below, while the formal response is provided at Appendix 1.

The ATO welcomes this review and considers the report supportive of our activities promoting compliance with Superannuation Guarantee obligations.

We are committed to fostering willing participation with superannuation guarantee through improved services as well as committed to dealing with non-compliance by striking the right balance between encouragement and enforcement according to individual circumstances

The review acknowledged work that the ATO is currently progressing to promote and improve compliance with superannuation guarantee that will complement the recommendations contained in the report.

The ATO agrees with the four recommendations contained in the report.

Recommendations

Recommendation No.1
Paragraph 2.49 To provide greater assurance of the level and nature of non-compliance with Superannuation Guarantee obligations, the ANAO recommends that the ATO:

- (a) better analyses non-compliance, including at the industry sector levels and among the categories of employees most at risk; and
- (b) further engages with external stakeholders involved in Superannuation Guarantee compliance activities.

ATO response: Agreed.

Recommendation No.2
Paragraph 3.29 To more effectively encourage employers to comply with their Superannuation Guarantee obligations, the ANAO recommends that the ATO increases the emphasis on the ATO's role in enforcing compliance in its communication and marketing activities.

ATO response: Agreed.

Recommendation No.3
Paragraph 4.40 To improve the effectiveness of the ATO's Superannuation Guarantee compliance activities, the ANAO recommends that the Superannuation business line better aligns its Superannuation Guarantee compliance strategy with the compliance activities conducted by other relevant business lines.

ATO response: Agreed.

Continued on next page

**Recommendation
No.4**

Paragraph 5.37

To enable a reliable assessment of the effectiveness of compliance strategies to address the risks of non-compliance with Superannuation Guarantee obligations, the ANAO recommends that in future Compliance Effectiveness Methodology evaluations, the ATO:

- (a) develops indicators, targets and timeframes to assess if success goals are being achieved;
- (b) concludes whether strategies are effectively addressing Superannuation Guarantee compliance risks.

ATO response: Agreed.

Audit Findings

1. Background and Context

This chapter provides background information on the Australian Taxation Office's approach to promoting compliance with Superannuation Guarantee obligations. It also outlines the audit approach, including the objective, criteria, scope and methodology.

Introduction

1.1 Superannuation is a significant element of Australia's financial system. It represents the largest source of long-term savings in Australia and the second most significant source of wealth for many Australians, after the family home.³⁹ In December 2014, total superannuation assets were estimated at \$1.93 trillion, and superannuation contributions for the year ending December 2014 were \$100.6 billion, of which employer contributions totalled \$77 billion.⁴⁰

1.2 The superannuation industry has benefited substantially from the introduction of the Superannuation Guarantee (SG) Scheme in 1992.⁴¹ The SG Scheme is a compulsory system of superannuation support, paid to superannuation funds by employers on behalf of their employees, and is one of the three pillars of Australia's retirement income system.⁴² Under this system, it is expected that most people's retirement income will be funded from a combination of superannuation and the age pension. As the system matures, it is envisaged that there would be an increase in the proportion of the population who receive part-rate, rather than the full, age pension.⁴³ In 2014,

39 Australian Government, *Stronger Super—Government response to the Super System Review*, 2010, p. 3, available from http://strongersuper.treasury.gov.au/content/Content.aspx?doc=publications/government_response/summary.htm [accessed 5 January 2015].

40 Australian Prudential Regulation Authority (APRA), *Quarterly Superannuation Performance* (interim edition) December 2014 (issued 19 February 2015) p. 7.

41 Department of Parliamentary Services, *Superannuation Guarantee (Administration) Amendment Bill 2011*, Bills Digest No 77, 2011–12, 18 November 2011, p. 12, available from http://parlinfo.aph.gov.au/parlInfo/download/legislation/billsdgs/1234526/upload_binary/1234526.pdf;fileType=application%2Fpdf#search=%22legislation/billsdgs/1234526%22 [accessed 23 December 2014].

42 The other two pillars are: voluntary superannuation contributions encouraged by tax concessions; and the means tested and publicly funded age pension, which acts as a safety net for those Australians who have been unable to accumulate enough resources for their retirement.

43 Department of the Treasury, *A Super Charter: Fewer changes, better outcomes*, July 2013, p. 8, available from http://www.treasury.gov.au/Policy-Topics/SuperannuationAndRetirement/supercharter~/media/Treasury/Policy%20Topics/Superannuation/supercharter/Downloads/PDF/super_charter_report.ashx [accessed 23 December 2014].

the age pension was the largest Commonwealth spending program, with annual expenditure of \$39.5 billion, growing at 3.7 per cent per year in real terms to 2023–24.⁴⁴ The SG Scheme was introduced to reduce, over time, reliance on the age pension as a means of funding retirement for individuals and to provide a higher standard of retirement living.⁴⁵

Operation of the Superannuation Guarantee Scheme

1.3 Under the SG Scheme, in excess of 800 000 employers are required to make SG payments on behalf of approximately 11.7 million employees to some 548 000 superannuation funds.⁴⁶ The *Superannuation Guarantee (Administration) Act 1992* (the SG Act) sets out the administrative arrangements for the operation of the SG Scheme.

1.4 Since 1 July 2014, the minimum SG contribution is 9.5 per cent⁴⁷ of the employee's ordinary time earnings (OTE), up to a maximum contributions base of \$49 430 a quarter (or \$197 720 a year).⁴⁸ For the purposes of calculating an employee's SG contribution, OTE are the salary or wages paid to employees for their ordinary hours of work.⁴⁹

1.5 Employers must make SG contributions for all eligible employees who earn \$450 or more (before tax) in a month, whether they are full time, part time or casual, either permanent or temporary residents of Australia.⁵⁰ A contractor paid wholly or principally for labour is considered an employee for

44 National Commission of Audit, *Towards Responsible Government*, Appendix Volume 1, p. 162.

45 Department of the Treasury, *2015 Intergenerational Report*, March 2015, p. xix.

46 Self-managed superannuation funds account for 99.9 per cent of all superannuation funds. APRA, *Quarterly Superannuation Performance December 2014*, issued 19 February 2015, p. 7, <<http://searcha.beta.capmon.com/pdfdisplay/data/repository/pressrel/p1502191111.pdf>> [accessed 24 February 2015]. For number of employers, Commissioner of Taxation, *Annual Report 2013–14*, p. v; and number of employees, Australian Bureau of Statistics, *Labour Force Australia January 2015*, available from <<http://www.abs.gov.au/ausstats/abs@.nsf/mf/6202.0>> [accessed 24 February 2015].

47 The rate is intended to remain at 9.5 per cent until 2021, and then increase in increments of 0.5 per cent each year until it reaches 12 per cent in 2025.

48 For employees whose OTE are higher than the maximum contributions base, employers may still contribute 9.5 per cent of OTE. The extra contributions are not compulsory, unless they are required under an award or agreement.

49 OTE can include over-award payments, allowances, bonuses, commissions, and paid leave. Overtime payments are excluded unless an employer is unable to separately identify overtime amounts. Lump sum payments to an employee on termination in lieu of unused leave entitlements, such as sick leave, recreation and long service leave, are also excluded from the definition of OTE for SG contribution purposes.

50 There are some limited exceptions, the main one being that SG contributions do not need to be made for an employee aged less than 18 years and working fewer than 30 hours a week.

superannuation purposes and entitled to SG contributions under the same rules as employees.

1.6 On 1 July 2005, amendments to superannuation legislation, commonly known as 'Choice of Funds', came into effect. The amendments required employers to allow eligible employees⁵¹ to choose the superannuation fund into which their SG contributions would be paid. Where an employee does not choose a fund, the employer must advise the employee in writing of the name of the employer-nominated super fund (the default fund). Employers must also keep records that show: that eligible employees have been offered a choice of superannuation fund; the amount of superannuation paid for each employee and how it was calculated; and how any reportable employer superannuation contributions were calculated.

1.7 Under tax and superannuation law, employers are not required to report to employees SG contributions made on their behalf. However, the *Fair Work Act 2009* and the *Fair Work Regulations 2009* require relevant employers to include in payslips the amount of superannuation contributions they are liable to make or have made, and contact details of the superannuation fund into which the contributions have been or will be made.

1.8 Where employers do not pay adequate SG obligations to the employee's nominated fund on time, they may be liable for a SG charge. The SG charge consists of: the amount of superannuation not contributed (the 'shortfall'); an interest component (currently 10 per cent a year); and an administrative fee of \$20 per employee per quarter. The employer is required to lodge a SG charge statement with the ATO, calculate the amount of SG charge payable, and pay the SG charge by the due date for the relevant quarter. The ATO forwards the shortfall and interest components to the employee's superannuation fund. Employer contributions to a complying superannuation fund are generally tax deductible, but the SG charge is not.

1.9 The ATO website encourages employees to: check their payslips and superannuation fund statements to ensure correct payments; and follow-up any unpaid superannuation contributions with their employer, superannuation fund, and the ATO. An employee who believes that SG contributions have not been paid can submit an 'employee notification'

51 Employees that do not have fund choice include those working under a state award or industrial agreement.

(EN) to the ATO (either by telephone, online or in writing). The ATO aims to investigate all ENs and, when it considers appropriate, audits employers to verify that correct SG payments have been made.

ATO role in administering the Superannuation Guarantee Scheme

1.10 The Commissioner of Taxation is responsible for the day to day administration of the SG Act. The ATO's role in relation to compliance with SG obligations is outlined in the ATO's Portfolio Budget Statements (PBS), and states:

The ATO administers the [Superannuation Guarantee] programme by supporting employers to comply with their superannuation guarantee obligations and identifying and dealing with those who do not.⁵²

1.11 Relevant activities undertaken by the ATO include:

- educating employers and employees about their SG responsibilities;
- responding to ENs;
- monitoring employer compliance with SG obligations and investigating employers for possible breaches of the SG legislation;
- administering the SG penalty regime; and
- advising the Department of the Treasury (the Treasury) of changes required to superannuation law, including the SG Act.

1.12 The SG Scheme largely operates without intervention from the ATO, with employers making SG contributions to employees' funds or via clearing houses.⁵³ As presented in Figure 1.1, the ATO's direct intervention is limited to those cases where:

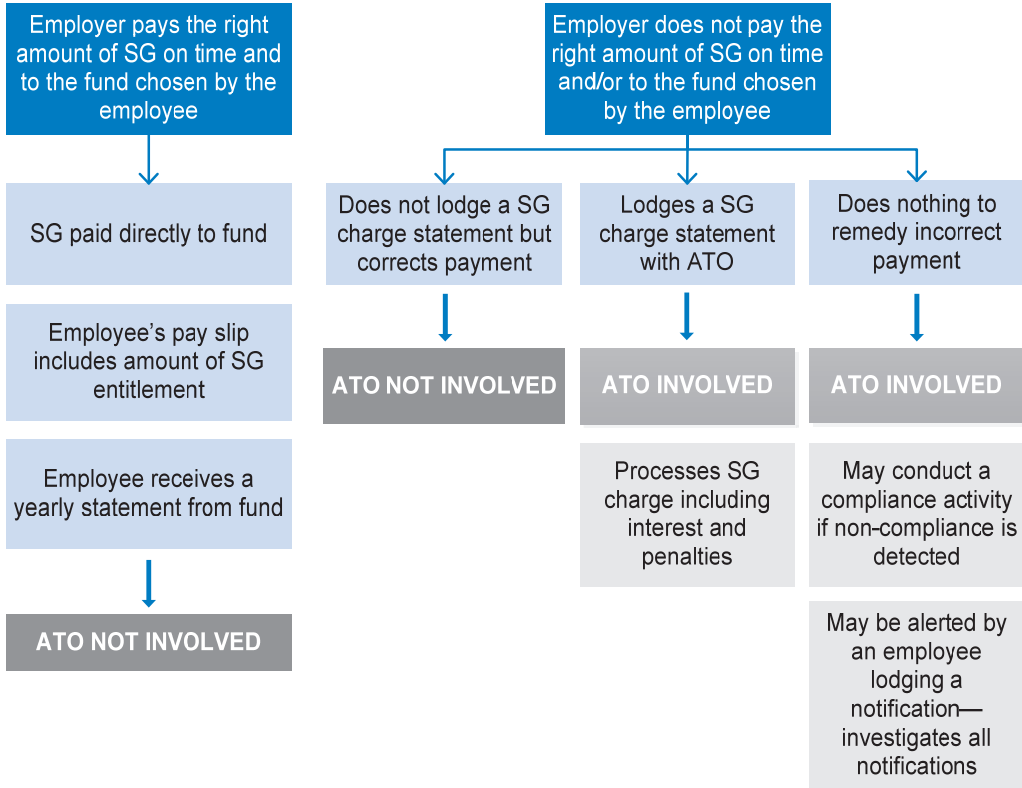
- employees do not believe that they have received their full superannuation entitlements or been provided a choice of fund, and notify the ATO through lodging an EN;

52 Australian Government, *Portfolio Budget Statements 2014–15, Budget Related Paper No. 1.16, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2014, p. 214.

53 Clearing houses act as an intermediary between employers and funds. They receive a single aggregated superannuation contribution amount from an employer, and then distribute each employee's contribution to the superannuation fund of the employee's choice.

- employers do not comply with their obligations and notify the ATO by lodging a SG charge statement; and
- the ATO, through its risk-based compliance work, detects and addresses an employer’s non-compliance.

Figure 1.1: ATO’s role in administering the SG Scheme



Source: ANAO analysis, based on ATO documents.

1.13 As the SG Scheme operates largely independently of the ATO, the Office only has partial visibility of the flow of money and information between employers, employees and superannuation funds, affecting its capacity to encourage compliance and address non-compliance with Scheme obligations.

Role of superannuation funds in promoting compliance

1.14 The SG Scheme’s operation is also characterised by the direct involvement in compliance activities of other stakeholders, particularly superannuation funds. Superannuation funds are broadly categorised by the *Superannuation Industry (Supervision) Act 1993* into large funds, regulated by

the Australian Prudential Regulation Authority (APRA), and self-managed superannuation funds (SMSFs), regulated by the ATO. While SMSFs have just three per cent of all members, they account for the vast majority of all superannuation funds (99.9 per cent).⁵⁴ Within APRA-regulated funds, several types of funds exist, as outlined in Table 1.1.

Table 1.1: Fund types regulated by the Australian Prudential Regulation Authority, June 2013

Fund type	Description	Member accounts ('000)
Retail	Retail funds are open to anyone and are usually run by banks or investment companies. The company that owns the fund aims to retain some profit.	14 395
Industry	The larger industry superannuation funds are open for anyone to join. Others are restricted to employees in a particular industry. They are 'not for profit' funds, in that all profits are returned to the fund to benefit members.	11 524
Public sector	Public sector funds were created for employees of federal and state government departments. Most are only open to government employees. Profits are returned to the fund to benefit members.	3 337
Corporate	A corporate fund is arranged by an employer, for its employees. Some larger corporate funds are 'employer sponsored', as the employer also operates the fund. Other corporate funds are operated by a large retail or industry super fund (especially for small and medium-sized employers). Funds run by the employer or an industry fund will return all profits to members. Retail companies that run corporate funds will retain some profits.	512

Source: APRA, *Annual Superannuation Bulletin*, June 2013 (revised February 2014), p. 19, and ASIC, MoneySmart website, *Types of super funds*.

1.15 Industry funds, which hold almost 40 per cent of all member accounts, play a significant role in supporting employers' compliance with SG obligations. They often have intervention strategies to pursue and collect superannuation contributions in arrears, and also employ debt collection services, such as the Industry Funds Credit Control.

54 At June 2013, there were 512 761 funds, of which 512 375 were SMSFs. APRA, *Annual Superannuation Bulletin*, June 2013 (revised February 2014), p. 19, available from <http://www.apra.gov.au/Super/Publications/Documents/Revised%202013%20Annual%20Superannuation%20Bulletin%2005-02-14.pdf> [accessed 23 December 2014].

Complexity of the Superannuation Guarantee Scheme

1.16 Some features of the law setting out the operation of the SG Scheme present practical challenges for employers, employees, and the ATO. As mentioned previously, SG amounts must be calculated on the basis of OTE. The ATO distinguishes over 30 different types of possible earnings, from base salary and wages (the most common) to overtime, shift loading and pay for sick leave taken.⁵⁵ Differentiating OTE from other types of payments (and therefore calculating SG amounts correctly) is not always straightforward, for employers and employees. These factors make it difficult for the ATO to correctly estimate the amount of SG contributions that should be paid by employers.

1.17 Determining whether and how much SG contributions are payable can also be difficult in situations where the employment status of the worker is not straightforward. Employers generally do not have to pay SG contributions on behalf of their contractors (unless the contractor is paid wholly or principally for labour). Establishing whether a worker is an employee or a contractor for SG purposes can be difficult.⁵⁶ Also, a number of employers may try to avoid their SG responsibilities (and other employer obligations) by treating workers as contractors when they really are employees—a practice sometimes referred to as ‘sham contracting’.

1.18 As with pay as you go (PAYG) withholding for income tax purposes, employers must make SG payments on behalf of their employees, with transfers to funds occurring at least quarterly. The ATO has identified that one of the main causes of late SG payments is cash flow problems, especially among small businesses.⁵⁷ Employers who wish to be compliant, but pay their SG obligations late and lodge an SG charge statement, are subject to penalties that the ATO has described as punitive and inequitable.⁵⁸ For example, the owner of a motel employing 25 to 30 people who had fully paid all superannuation, albeit with a delay of a few days or months each quarter, was

55 See Appendix 2.

56 The ATO has developed an employee contractor decision tool which assists workers in determining their employment status.

57 Colmar Brunton Social Research, *Attitudes to Superannuation: Quantitative investigation with employers*, January 2010 [research commissioned by the ATO], p. 38.

58 The ATO included the description in a review to the Treasury aiming at improving the policy, law and administration of the SG Scheme. ATO, *Superannuation Guarantee Review*, May 2014.

found liable to pay almost \$80 000 in interest accrued over four years and over \$10 000 in administrative fees.⁵⁹

1.19 As employees have a choice of superannuation funds, employers may be required to make payments to multiple funds, incurring additional administrative demands, especially when using manual processes such as paying by cheque. While small businesses are able to use the free services of the Small Business Superannuation Clearing House, administered by the ATO, the proportion of business who do so remains low⁶⁰, and these multiple payments can be an administrative burden for many employers.

1.20 For employees, as previously mentioned, establishing the correct amount of SG payment that they are entitled to is difficult, unless their working arrangements are straightforward (in particular, no salary sacrifice, overtime or shift work). Further, while generally employers are required to indicate on payslips the amount of SG contributions accrued, this does not mean that the amount was actually paid to the superannuation fund.⁶¹ Additionally, as SG payments are made quarterly, but employees often receive a statement from their fund annually, they may not be able to detect non-payment or under-payment until almost 12 months after the payment was due.⁶² In other situations, employees do not complain to the ATO of unpaid superannuation until after they have left their employers, for fear of retribution.⁶³ These factors contribute to the ATO's difficulty in identifying and

59 ATO, *Superannuation Guarantee Review*, May 2014.

60 The ATO reported that more than 91 700 employers had registered with the Small Business Superannuation Clearing House by 30 June 2014, or approximately 13 per cent of the 690 000 actively trading businesses with less than 20 employees as at 30 June 2013. See also ANAO Audit Report No.47 2011–12, *Small Business Superannuation Clearing House*, 2012.

61 The *Superannuation Industry (Supervision) Act 1993* included provisions requiring employers to mention, on an employee's payslip, information about superannuation payments actually made in a pay period (as distinct from superannuation contributions accrued, as currently prescribed under the regulations to the *Fair Work Act 2009*). Parliament repealed these provisions on 25 February 2015. Parliament of Australia, *Treasury Legislation Amendment (Repeal Day) Act 2014*, available from <http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r5362> [accessed 3 March 2015].

62 As part of the 2011–12 Budget, a measure was announced requiring funds to report contributions to members either quarterly or every six months and to alert members about unpaid superannuation. In December 2013, the Government announced that this measure would not proceed. A Sinodinos (Assistant Treasurer), *Integrity restored to Australia's taxation system*, media release, 14 December 2013, p. 13.

63 GfK Australia Pty Ltd, *Superannuation Guarantee Research*, August 2013 [research commissioned by the ATO] available from <<https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/General-statistics/Superannuation-Guarantee-Research-2013/>> [accessed 5 January 2015].

investigating non-compliance in a timely manner, and are problematic where an employer has become insolvent in the meantime.⁶⁴

The Treasury's and the Australian Prudential Regulation Authority's role in the operation of the SG Scheme

1.21 The Treasury has responsibility for superannuation and retirement savings policy, including the SG Scheme. The Treasury and the ATO have a commitment to work collaboratively to provide advice to government on law design and policy issues affecting the tax and superannuation systems. A protocol underpins this commitment, which outlines the:

- approach to policy and legislation design, development and implementation;
- costing process for new and updated policy proposals; and
- provision of advice by the ATO to Treasury when the ATO has identified that enacted law is not operating consistently with the policy intent of the law.⁶⁵

1.22 APRA's role is to develop and enforce a robust framework of legislation, prudential standards and guidance that promotes prudent behaviour by authorised deposit-taking institutions (such as banks), superannuation funds, general insurers, and life insurers and friendly societies. The ATO and APRA have longstanding formal arrangements to facilitate the exchange of superannuation related information.⁶⁶

ATO administrative arrangements and resourcing

1.23 The Superannuation business line, which is part of the Compliance Group, administers aspects of the superannuation system, including the SG Scheme. As at July 2014, the Superannuation business line had a budget of \$103.4 million and 917 full time equivalent (FTE) staff engaged in superannuation activities. Of these, approximately 360 FTE were allocated to

64 Unpaid SG contributions will be more difficult to recover as time passes and particularly in cases of insolvency.

65 ATO, *Treasury and the Australian Taxation Office Tax and Superannuation Protocol*, 10 September 2012, available from <<https://www.ato.gov.au/General/New-legislation/In-detail/ATO---Treasury-protocols/ATO---Treasury-protocol/>> [accessed 3 June 2014].

66 The current Memorandum of Understanding between the ATO and APRA covers the period December 2013 to December 2016.

SG activities, including 236 FTE to compliance activities. The total program expenses for the special appropriation for the SG Act have almost doubled from 2008–09 to 2014–15 (from \$217 million to \$468 million), and are expected to grow moderately across the forward years (to \$510 million in 2017–18).

1.24 For governance and operating purposes, the Superannuation business line is divided into segments and further into product teams or functional units. Responsibility for administering the SG Scheme rests with the SG Product Management Team (SG Team). The SG Team is responsible for:

- managing SG across the ATO;
- identifying and managing SG risks, including developing strategies to mitigate those risks;
- recommending law and policy changes to the Treasury; and
- administering bilateral superannuation agreements, including the implementation of new agreements and processing certificates of coverage.

1.25 A feature of the administration of the SG Scheme is the number of areas within the ATO that have responsibility for some element of its administration. As a result, many tasks are undertaken in teams other than the SG Team, for example, most marketing activities are conducted at the Superannuation business line level.

Previous audits and reviews

1.26 ANAO Audit Report No.16 1999–2000, *Superannuation Guarantee*, examined the ATO’s administration of the SG Scheme. The Report concluded it was effective overall, and made eight recommendations.

1.27 In March 2010, the Inspector-General of Taxation published a report on his review of the ATO’s administration of the SG charge.⁶⁷ While the report concluded that the SG Scheme worked well for most Australians, it found the employees most at risk (working in micro businesses, contracted and casual, and younger employees) were also the least empowered and those most reliant upon compulsory superannuation contributions for a higher standard of living

67 Inspector-General of Taxation, *Review into the ATO’s administration of the Superannuation Guarantee charge*, March 2010.

in retirement, beyond the age pension. The review also noted the significant variance between SG charges raised and collected. The Inspector-General of Taxation made twelve recommendations to improve the early identification of any SG shortfall, the timely handling of employee notifications and the prompt collection of the outstanding SG charge. Of these recommendations, seven were directed in full to the ATO, three were directed in part to the ATO, and two were policy matters requiring government consideration. The ATO agreed with nine of the 10 recommendations directed to it fully or in part, and disagreed with one recommendation proposing to significantly expand SG audit activities.

Audit objective, criteria and methodology

Audit objective and criteria

1.28 The objective of the audit was to assess the effectiveness of the Australian Taxation Office's activities to promote employer compliance with Superannuation Guarantee obligations.

1.29 To form a conclusion against this objective, the ANAO adopted the following high-level criteria:

- administration and compliance activities are supported by effective management arrangements;
- compliance risks are identified through effective risk assessment processes and a comprehensive compliance strategy is in place;
- compliance activities, associated objections and debt collection arrangements are conducted effectively; and
- performance monitoring demonstrates the extent to which outcomes and objectives have been achieved.

Methodology

1.30 The ANAO reviewed relevant documentation, interviewed key staff at the ATO, and consulted industry and other stakeholder groups. The ANAO also undertook substantive testing and analysis of the ATO's databases, systems and processes as they related to the management of SG compliance.

1.31 The audit was conducted in accordance with the ANAO audit standards at a cost of approximately \$635 000.

Structure of the report

1.32 Table 1.2 outlines the structure of the report.

Table 1.2: Structure of the report

Chapter	Overview
2	Assessing Overall Compliance Risk Examines the ATO's approach to assessing the overall risk of non-compliance with Superannuation Guarantee obligations, which is integral to the development of the Superannuation Guarantee compliance strategy.
3	Promoting Voluntary Compliance Examines the ATO's arrangements to encourage voluntary compliance with Superannuation Guarantee obligations. Also assesses the ATO's contributions to improving Superannuation Guarantee legislation.
4	Addressing Non-Compliance Examines the approach used by the ATO to identify and address non-compliance with Superannuation Guarantee obligations. Assesses how the ATO selects different categories of employers for active compliance activities. Also examines the two main aspects of its Superannuation Guarantee active compliance strategy: responding to employee notifications and conducting proactive audit work.
5	Quality Assurance, Review Process and Evaluation Examines the ATO's arrangements for continuous improvement, including how it: assures the quality of Superannuation Guarantee compliance cases; responds to objections, appeals and complaints; and evaluates the performance of Superannuation Guarantee compliance strategies and activities in mitigating compliance risks.

2. Assessing Overall Compliance Risk

This chapter examines the ATO's approach to assessing the overall risk of non-compliance with Superannuation Guarantee obligations, which is integral to the development of the Superannuation Guarantee compliance strategy.

Introduction

2.1 To fulfil its SG responsibilities, the ATO must understand the overall risk of non-compliance, those industries or market segments at highest risk and the main triggers of non-compliance. Understanding compliance risks is particularly important as it underpins the SG compliance strategy, and the extent and nature of the ATO's compliance activities.

2.2 The ATO considers that overall, based on its risk analysis, the SG Scheme works well. This analysis focuses on the value of SG contributions as a proportion of total salary and wages, and on the number of employee notifications (ENs) in relation to the overall number of employees. However, some stakeholders have conducted research that challenges this view, as discussed later in this chapter.

2.3 The ANAO examined the appropriateness of the ATO's assessment of the overall risk of non-compliance with SG obligations, in particular:

- the ATO's assessment of compliance risk;
- external stakeholders' assessment of compliance risk; and
- the ATO's use of external information sources.

ATO assessment of Superannuation Guarantee compliance risk

2.4 The ATO uses an Enterprise Risk Management Framework to record, categorise and manage risks that 'may compromise either [the ATO's] outcome or community confidence in the fair and effective administration of Australia's taxation and superannuation systems'.⁶⁸ The Enterprise Risk Management Framework defines three categories of risks: enterprise risks, relating to a core

68 ATO, *Risk and Issues Management*, Corporate Management Practice Statement PS CM 2003/02, 22 May 2013.

or enabling business function or process; operational risks, which are a component or a part of an enterprise risk; and tactical risks, associated with localised events or activities such as transactions, incidents and cases.

2.5 Of the four enterprise risks identified for superannuation, one relates directly to SG, and of the 20 superannuation operational risks, two involve SG.⁶⁹ Table 2.1 describes the three SG risks, and the ATO’s rating and mitigation status for each risk, as at June 2014.

Table 2.1: SG enterprise and operational risks, June 2014

Name	Description	Residual Rating	Mitigation Status
SG (enterprise)	‘Our aim is to have employers engaged and complying with their SG obligations. This will contribute to the integrity of the retirement income system and build community confidence.’	Significant	Green
SG legislation complexity (operational)	‘The complexity of SG legislation leads to lower levels of compliance as stakeholders may not understand or be aware of their obligations and entitlements.’	Moderate	Green
SG employer obligations (operational)	‘Employers actively seeking to avoid their SG obligations and our failure to identify non-compliance due to lack of reporting data leads to reduced employer compliance and an undermining of community confidence.’	Low	Green

Source: ANAO analysis of ATO documents.

2.6 The ATO assessed the mitigation status for these risks as green, which means there were no significant obstacles to the existing risk mitigation strategies working.

2.7 As indicated previously, the ATO uses two key measures to support this assessment: at the macro level, employer SG contributions exceed the statutory percentage of salary and wages; and employee notifications received by the ATO remain very low as a proportion of employee populations. In his 2013–14 Annual Report, the Commissioner states:

Overall, employers continue to demonstrate high levels of voluntary compliance with their superannuation guarantee obligations. Total employer

69 A third operational risk, relating to employers failing to provide employee tax file numbers to the superannuation funds, was identified as low in July 2014 and ceased being reported from that date.

contributions as a proportion of total salary and wages were above the base rate of nine per cent for SG contributions in the 2012–13 year. (...) Only a relatively small number of individuals notified us that their employers had not paid their SG entitlements.⁷⁰

2.8 The view that the SG Scheme is operating successfully overall was reinforced in the ANAO’s discussions with ATO executives, and through conclusions drawn by the ATO from 2013 commissioned research:

Overall, research found employees’ lack of concern about and engagement with superannuation guarantee suggests the system is working well for most, so much so that minimal intervention is required.⁷¹

2.9 While considering that the SG Scheme works well overall, the ATO has analysed ENs to gain a better understanding of the profile of non-compliant employers (Table 2.2).

Table 2.2: Case study—characteristics of non-compliant employers

Most ENs received by the ATO relate to employers in either micro businesses (70 per cent) or small businesses (23 per cent). There is also a relatively high number of ENs lodged by employees from the following sectors:

- accommodation and food services;
- rental, hiring and real estate services;
- administrative and support services (for example accounting, computer design and related services); and
- other services (for example automotive repair and maintenance services, and personal care services).

Not meeting SG obligations often occurs together with non-compliance with other employer obligations, such as failure to withhold employee’s income tax (which may arise through paying wages in cash or incorrectly treating employees as contractors). Industries where these two practices are more prevalent are also sources of frequent non-compliance with SG obligations. These industries include construction, transport, accommodation and food.

According to the ATO, employer non-compliance with SG obligations is driven mainly by cash flow issues, resulting in employers using SG funds as business operating expenses. However, there will also be a level of disengagement with the SG Scheme among some employers, where SG is given a low priority.

Source: ANAO analysis of ATO documents.

70 Commissioner of Taxation, *Annual Report 2013–14*, pp. 19 and 67.

71 ATO website, <<https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/General-statistics/Superannuation-Guarantee-Research-2013/>>, [accessed 1 October 2014].

Estimating Superannuation Guarantee contributions as a proportion of salary and wages

2.10 One of the two measures used by the ATO to assess the risk of non-compliance with SG obligations is the overall rate of SG contributions. In addition to providing an indication of the level of employer compliance with SG obligations, this measure is used for accountability purposes: the ‘adjusted employer superannuation contributions as a proportion of adjusted salary and wages’ is one of three key performance indicators relating directly to superannuation in the ATO’s Portfolio Budget Statements in 2013–14.⁷²

2.11 Calculating this measure is not straightforward. The information available to the ATO from employers, employees and funds has historically been reported at an aggregated level, which means that it does not allow for an exact reconciliation of amounts paid at the individual level.

2.12 In 2010, the Inspector-General of Taxation recommended⁷³ that the ATO develop a more sophisticated analysis of the level of non-compliance with SG obligations and its impact on employees. Concurrently, the Government introduced a new reporting measure that required employers to include, from 2009–10, ‘reportable employer superannuation contributions’ (RESC)⁷⁴ in employee payment summaries, which enabled the ATO to separate salary sacrifice amounts from SG amounts more accurately. Using RESC and the member contributions statements provided annually by superannuation funds, the ATO’s Revenue Analysis Branch (RAB)⁷⁵ developed and implemented a new methodology to calculate the rate of SG contributions. On the basis of this new methodology, the Commissioner of Taxation has stated, consistently since 2011–12 (including in the 2013–14 Annual Report⁷⁶) that the level of employer contributions was above the statutory SG rate. As at

72 Australian Government, *Portfolio Budget Statements 2014–15, Budget Related Paper No. 1.16, Treasury Portfolio*, Commonwealth of Australia, Canberra, 2014, p. 192. The other two key performance indicators were: ‘time-cost index for businesses and superannuation funds to prepare and complete key tax forms’; and ‘proportion of SMSF contraventions compared to the number of fund lodgements’.

73 Inspector-General of Taxation, *Review into the ATO’s Administration of the Superannuation Guarantee Charge*, March 2010, Recommendation 1, p. 8.

74 RESC are those made by an employer on behalf of an employee, such as salary sacrifice contributions or extra super contributions. Contributions not regarded as RESC are SG contributions or contributions made under a collectively negotiated industrial agreement.

75 RAB is responsible for the measurement of revenue impacts, revenue forecasting and policy costing work, which may also be undertaken in conjunction with the Treasury.

76 Commissioner of Taxation, *Annual Report 2013–14*, October 2014, p. 67.

June 2013, the ATO estimated the level of SG contributions to be at 9.5 per cent against a legal requirement of nine per cent.

2.13 While this methodology provides some improvement over previous estimations, RAB has identified that it has a number of significant shortcomings, including:

- the high-level estimation masks the fact that at a disaggregated level, significant disparities may exist between industries (or within industries and between business sizes). RAB warns that ‘as some employers pay more than the minimum SG, this could cancel out employers who do not pay’;
- employees who do not receive any SG contributions at all (either because they are in a sham contracting arrangement, or their employer is non-compliant with their SG obligations or involved in the cash economy) are not captured by RAB’s calculations;
- employers do not report to the ATO on SG contributions made, only on RESC made on behalf of employees. To estimate SG amounts RAB must rely on a third-party data source, the Member Contribution Statements, which poses challenges for identity matching and consistency of reporting; and
- the reliability of ATO’s estimation of the level of SG contributions depends on employers accurately calculating SG amounts. The complexities involved in calculating SG amounts when an employee salary sacrifices could lead the ATO to overstate or understate the level of SG contributions.

2.14 The ATO could reconsider the confidence afforded to the current estimate, when reporting against their PBS key performance indicator, and in concluding that overall, employers are highly compliant with their SG obligations. This view of SG compliance is in contrast to the assessment of a range of external superannuation stakeholders, as discussed in the subsequent sections of this chapter. It also contrasts with internal ATO documents evaluating the SG risk, which state that non-compliance is ‘an endemic part of

the superannuation system'⁷⁷; and a 'probable estimate of employers not meeting their SG obligations is between 11 and 20 per cent'.⁷⁸ Further the ATO's indicator of SG outstanding debt (related to ATO compliance outcomes) is showing a persistent increase: from under \$500 million in July 2008 to over \$1 billion at June 2014.⁷⁹

Employee notifications as a proportion of population of employees

2.15 The number of ENs in proportion to the overall number of employees is the other main measure used by the ATO to assess the risk of non-compliance with SG obligations. According to the ATO, the fact that only a small minority of employees (less than 0.2 per cent in 2013–14, or approximately 20 000 individuals) notify the ATO of a potential breach with SG obligations, is another indicator that, for the most part, the SG Scheme is working well.

2.16 However, there are shortcomings in using this approach as it assumes that employees are in a position to readily identify unpaid superannuation and willing to report it to the ATO. Based on research commissioned by the ATO in 2013⁸⁰, there is evidence that employees, in general and more so among those industries most at risk, are not receiving their SG entitlements. The research reported that the causes of this non-compliance, included that employees:

- may be unaware of their entitlement to SG, are not interested in superannuation or do not know how to check that their SG has been paid (while nine in 10 employees surveyed considered it important or extremely important that employers pay SG, one in two did not know what to do and where to go if they had questions about the SG Scheme);
- do not know that the ATO is responsible for ensuring that employers are making SG contributions (this was the case for four in 10 employees surveyed);

77 ATO internal documents include: *Product diagnostic*, March 2013, p. 15; *Compliance Effectiveness Methodology workbook 2014*; and *SG Risk Assessment*, pp. 10 and 16. 'Endemic' is defined by the ATO as pervasive through time and/or populations.

78 ATO, *Superannuation Guarantee Risk Assessment*, 11 April 2012, pp. 10 and 16.

79 Commissioner of Taxation, *Annual Report 2013–14*, p. 87 and an ATO internal report.

80 GfK, *Superannuation Guarantee Research*, pp. 16, 20, 40 and 37 respectively, available from <<https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/General-statistics/Superannuation-Guarantee-Research-2013/>> [accessed 5 October 2014].

- choose not to complain—among the minority of employees who had wanted to make a complaint about SG payments, just over half said they would do nothing about it, citing fear of losing their job or angering their employer.⁸¹ ATO and ANAO analysis of ENs also reveals that approximately 70 per cent of the notifications are received only after the employee has left the company (Chapter 4 Table 4.2); and
- may be discouraged by the complexity of lodging an online complaint (EN) with the ATO.

2.17 A number of stakeholders also address employer non-compliance with superannuation obligations, which means that a significant number of complaints never reach the ATO. Most industry superannuation funds have processes to pursue arrears in award superannuation payments with employers.⁸² For instance, one industry fund collected over \$53 million in arrears in 2013–14, and the Industry Funds Credit Control (IFCC) website states that ‘during the 2011–12 financial year, IFCC collected more than \$100 million of outstanding member entitlements’.⁸³

2.18 Consequently, the number of ENs received is not a reliable indicator of the level of non-compliance. Given the diverse and sometimes cumulative barriers to lodging a complaint with the ATO, the ENs received could represent a fraction of the potential complaints.⁸⁴ For this indicator to be more reliable, it is important that the ATO measures the impacts of these barriers on complaints lodgement, and also takes into account the complaints received and activities conducted by other stakeholders involved in award superannuation compliance work.

81 See also Anderson H and Hardy T, ‘Who should be the super police? Detection and recovery of unremitted superannuation’, *UNSW Law Journal*, Volume 71(1) 2014, p. 168.

82 Most modern awards contain a superannuation clause requiring employers to make employee superannuation contributions to a default superannuation fund specified in the award, such as an industry superannuation fund. Award superannuation contributions count towards employer SG obligations.

83 IFCC website, available at <<http://www.ifs.net.au/about-us/about-industry-fund-services/industry-funds-credit-control/>>, [accessed 5 October 2014].

84 ATO research commissioned in 2013 found that 13 per cent of employees surveyed wanted to make a complaint and of these, about half did so.

Measuring the ‘superannuation guarantee gap’

2.19 The tax gap is defined by the ATO as:

... the difference between the actual tax liability reported to us, or that we raise, and the tax liability that should be reported. That is to say, tax that would be reported assuming that all businesses and individuals fully complied with their tax-reporting obligations.⁸⁵

2.20 The ATO has reported on the tax gap for the goods and services tax for a number of years and in 2014 commenced a project to measure the gap for other taxes, and more broadly for the Australian tax system.⁸⁶ In a similar way, assessing the magnitude of, and trends in, the ‘SG gap’ would assist the ATO to understand the level of compliance with SG obligations, and more accurately assess the risk of non-compliance. Until 2014, the ATO had not undertaken any work in this direction. However, the ATO has advised that it commenced, during the course of this audit, work to estimate the ‘SG gap’, as part of the wider internal project to measure the ‘tax gap’.

External stakeholders’ assessment of compliance risk

2.21 In its 2010 report on the ATO’s administration of the SG charge, the Inspector-General of Taxation stated that he was ‘not convinced that the ATO’s macro picture [was] representative of the true level of non-compliance’.⁸⁷ Estimates submitted to the Inspector-General of Taxation in a joint submission⁸⁸ suggested that more than 500 000 employees were not receiving their full superannuation entitlements.

85 ATO, *Tax gap overview*, Available from <[https://www.ato.gov.au/Business/Bus/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-\(GST\)-and-the-luxury-car-tax-\(LCT\)?anchor=Tax_gap_overview#Tax_gap_overview](https://www.ato.gov.au/Business/Bus/Measuring-tax-gaps-in-Australia-for-the-goods-and-services-tax-(GST)-and-the-luxury-car-tax-(LCT)?anchor=Tax_gap_overview#Tax_gap_overview)> [accessed 5 February 2015].

86 Parliament of the Commonwealth of Australia, *2013 Annual Report of the Australian Taxation Office, House of Representatives Standing Committee on Tax and Revenue*, March 2014, p. 8.

87 Inspector-General of Taxation, *Review into the ATO’s Administration of the Superannuation Guarantee Charge*, March 2010, p. 32. Available from <http://www.igt.gov.au/content/reports/super_guarantee/superannuation_guarantee.pdf> [accessed 26 September 2014].

88 Submission made jointly by the Australian Council of Trade Unions, Industry Super Australia, IFCC and the Australian Institute of Superannuation Trustees. Available from <<http://www.actu.org.au/Publications/Submissions/ReviewintotheTaxOfficesAdministrationoftheSuperannuationGuaranteeCharge.aspx>> [accessed 5 October 2014].

2.22 Through the consultation process conducted by the ANAO for this audit⁸⁹, a range of stakeholders from the superannuation industry advised that the extent of non-payment or under-payment of superannuation contributions in specific employment sectors could be significant. According to Industry Super Australia, a research and advocacy body for industry superannuation funds, ‘SG compliance in certain industries is well below acceptable levels’.⁹⁰ The IFCC, which collects outstanding super contributions and entitlements for the members of seven industry superannuation funds⁹¹, estimated the level of non-compliance among employers in general at between 12 and 17 per cent.⁹²

2.23 A research paper commissioned by Cbus, an industry superannuation fund with more than 722 000 members (from the building, construction and allied industries and general public members), estimated that non-compliance with SG payments was equivalent to \$2.5 billion in 2012 alone, with approximately 650 000 employees missing out on some or all of their superannuation contributions each year.⁹³ The Construction, Forestry, Mining and Energy Union (CFMEU) considers the construction industry to be the worst offender in SG non-compliance, with missing contributions totalling \$300 million to \$450 million each year as a result of sham contracting, and \$105 million to \$350 million a year as a result of phoenix activity.⁹⁴

2.24 ASIC statistics on unpaid employee entitlements by companies in external administration offer an additional insight on potential levels of unpaid

89 The ANAO invited 58 superannuation industry stakeholders (including the 30 members of the ATO’s Superannuation Industry Relationship Network, 11 trade unions, 15 superannuation funds and administrators, the Fair Work Ombudsman and the Tax Ombudsman) to make submissions to the ANAO. Sixteen of the entities participated in the consultation process, either by providing the ANAO with a written submission or by being part of a telephone interview.

90 Industry Super Australia written submission to ANAO, 12 September 2014.

91 The funds represented by the IFCC are AustralianSuper, CBus, Rest Super, Care Super, Clubplus, AMIST and HIP Super. Together these funds report having more than 4.8 million members. See <<http://www.ifs.net.au/about-us/about-industry-fund-services/industry-funds-credit-control/>>, [accessed 2 October 2014].

92 IFCC advice to ANAO, 18 August 2014.

93 Cbus submission to ANAO, 12 September 2014. These estimates are based on findings from research commissioned by Cbus and conducted in 2014 by Tria Investment Partners.

94 CFMEU submission to ANAO, 7 October 2014. Fraudulent phoenix activity occurs when a company deliberately enters into liquidation to avoid paying expenses such as creditors, taxes and employee entitlements. The directors transfer assets to a new entity, and continue operating the same or a similar business.

SG entitlements. They show that in 2012–13, ‘at the very least \$83 million in SG contributions were not paid by companies in external administration’.⁹⁵

2.25 Stakeholders’ consistent feedback was that employer non-compliance was likely to be widespread in small businesses and in businesses where a large number of cash transactions and contracting arrangements occur. These are often the industries where employment is the most transient, salaries are more likely to be low, and the workforce young, employed on a part-time or casual basis, or from migrant backgrounds and with low levels of skills and literacy.⁹⁶ Further, for some individuals, the impact of unpaid superannuation can be immediate; when SG payments are not made, the income protection insurance attached to some superannuation policies may also lapse, leaving the worker or their family exposed in case of injury or death. Table 2.3 presents an illustration of SG non-compliance in the clothing, restaurant and cleaning industries, as reported by some of the stakeholders consulted by the ANAO.

Table 2.3: Case study—unpaid superannuation in the clothing, hospitality and cleaning industries

Example 1

A Melbourne-based clothing company manufacturing women’s fashion garments entered into administration. The company had around 12 employees, mostly women from migrant backgrounds with limited English and computer literacy skills. The minimum weekly award rate payable was \$685 before tax (for full-time employment). Around half of these employees had salary sacrificed additional superannuation contributions; however, the company had never made any award superannuation contributions or remitted any salary sacrificed amounts. One employee with more than 10 years employment, retired at age 65 (before the company entered into administration) with no superannuation. Shortly after the company entered into administration, the owners commenced trading under a new company name from the same premises. Most of the employees were re-employed by the new company.

Example 2

Chris was working as a head-chef at a restaurant in Adelaide when he noticed some discrepancies in his pay, and that his superannuation was not being paid. He approached his employer, and was told the superannuation payments were correct, even though Chris’ superannuation fund statements showed otherwise. Chris was

95 Anderson H and Hardy T, ‘Who should be the super police? Detection and recovery of unremitted superannuation’, *UNSW Law Journal*, Volume 71(1) 2014, p. 174.

96 A 2006 survey of employers conducted by the ATO also found that the segments most at risk of receiving insufficient SG amounts were micro-business employees, contracted and casual employees and younger employees (18 to 25 years old). ATO, *Superannuation Guarantee Review: 1 April–30 June 2006*. The Cooper Review also stated: ‘There is evidence that [low income earners and casual workers] most commonly miss out on getting their superannuation entitlements’. Attorney-General’s Department, *Super System Review Final Report, Part Two: Recommendation Packages*, 2010, p. 328.

later made redundant. His employer had not paid him any superannuation for several years, and he was owed over \$9000.

Example 3

Most workers in the office and commercial cleaning industry are migrants on temporary visas, including international students. Ahmed is a cleaner working in a suburban shopping centre. Before commencing employment, his employer asked him to complete an application for an Australian Business Number with the intent of treating him as a contractor. While working, he wears a company uniform, works to a roster and is required to follow management directions. He receives no leave or other entitlements such as superannuation and the company does not withhold and remit income tax to the ATO on Ahmed's behalf. Ahmed has never worked under an Australian Business Number before and does not understand that he is liable for his own income tax payments.

Source: ANAO analysis of stakeholder submissions.

ATO use of external information sources

2.26 The ATO supports its assessment of superannuation compliance risk using a number of external information sources, including: data matching; third-party referrals; and consultative forums and other forms of engagement with external stakeholders.

Data matching

2.27 Data matching uses information from a variety of sources that are compiled electronically to support a range of education and active compliance activities. The ATO is authorised by the *Taxation Administration Act 1953*⁹⁷ to collect information from superannuation funds, through the annual Member Contribution Statements report. This information includes the superannuation fund and member tax file numbers, other member details, and the contributions made to members' superannuation accounts. Before July 2013, Member Contribution Statements only reported on members for whom contributions had been received that year. From 1 July 2013, the statements report on all members.⁹⁸

2.28 One factor that limits the completeness of this reporting, and the ATO's ability to gain a comprehensive view of an employee's SG contributions, is that employer details are not compulsory on the Member Contribution Statements.

97 *Taxation Administration Act 1953*, s.390–5 of Schedule 1.

98 Internally, the ATO uses data provided by taxpayers (employees and employers) when they lodge income tax returns and business activity statements.

As a consequence, in a large number of cases the ATO can extract the financial value of employer contributions but cannot link this amount to particular employers.

Third-party referrals

2.29 Third-party referrals are tip-offs about individual employers that may not have complied with their SG obligations. These referrals are received from members of the public, unions and other superannuation stakeholders (including the Office of the Fair Work Ombudsman) and ATO officers⁹⁹, and have been collected by the ATO since November 2007.

2.30 Since 2010–11, the ATO has received an average of 220 referrals each year (Table 2.4). The main contributors to third-party referrals are ATO officers (44 per cent); members of the public (25 per cent); and superannuation funds (24 per cent).

Table 2.4: Third-party referrals received, 2010–11 to 2013–14

Information Sources	2010–11		2011–12		2012–13		2013–14		Total	
	No.	%	No.	%	No.	%	No.	%	No.	%
ATO officers	59	29	71	37	85	40	169	63	384	44
Members of the public	60	29	71	37	35	16	58	22	224	25
Superannuation funds	78	38	39	20	67	31	31	12	215	24
Office of the Fair Work Ombudsman ¹	3	1	2	1	16	7	5	2	26	3
Other, including trade unions and tax agents	6	3	9	5	11	5	4	1	30	3
Total²	206	100	192	100	214	100	267	100	879	100

Source: ANAO analysis of ATO documents.

Note 1: The ATO advised that the 26 referrals from the Office of the Fair Work Ombudsman included in this table are sourced from press releases issued by that Office. These referrals are in addition to the lists provided by the Fair Work Ombudsman since 2012 (see paragraph 2.33).

Note 2: Percentage totals may not add to 100 due to rounding.

99 Information or intelligence from ATO officers in business units outside the Superannuation business line, such as the Small Business and Individual Taxpayers business line, can also be considered third-party, as formal processes are required to effectively share the information within the ATO.

2.31 Over the four-year period, unions contributed only three of all referrals received, and while superannuation funds lodged almost one quarter of all referrals, the number overall is small (54 a year on average). Promoting third-party referrals was a recommendation of a 2011 joint ATO and Industry Funds Forum project.¹⁰⁰ In response, the ATO developed an information sheet in March 2012 and promoted the third-party referral process to a number of superannuation entities in 2012, 2013 and 2014. Despite this, stakeholders consulted by the ANAO were not always aware of the third-party referral process.

2.32 To assist in discharging its functions and powers under the SG Act, the ATO has entered into agreements to exchange protected information relevant to SG with two Australian Government entities¹⁰¹: the Department of Human Services¹⁰²; and the Office of the Fair Work Ombudsman (the FWO).¹⁰³ The Department of Human Services provides the ATO with statistical reports containing personal information on employers and employees as part of the department's administration of the Small Business Superannuation Clearing House. However, the ATO indicated that using this information for SG compliance purposes is not a priority because the client base, having taken the step to register with the Clearing House to pay their SG contributions, is at lower risk of non-compliance.

2.33 The FWO, under an information sharing agreement signed in 2012, provides the ATO with personal information about entities and individuals suspected of engaging in fraudulent phoenix activities, and employers audited by the FWO that appear to have not met their SG obligations. Since entering into the agreement, the FWO has provided the ATO's SG Team with two lists of employers that may not have met their SG obligations—in March 2013 and March 2014, totalling 812 employer records.

2.34 The ATO has applied different treatments to referrals received from the FWO and to the other third party referrals presented in Table 2.4. Third-party

100 The Industry Funds Forum is a non-profit, non-political, nationally incorporated association whose members are the chief executive officers of 24 of Australia's largest industry superannuation funds.

101 Other agreements exist with APRA and ASIC however they relate to the administration of superannuation funds (including SMSFs) and are not used for SG-related purposes.

102 ATO/Human Services, *Services Schedule for the Small Business Superannuation Clearinghouse*, March 2014.

103 ATO/Fair Work Ombudsman, *Memorandum of understanding (subsidiary arrangement—Data exchange, Superannuation sub-plan—2012 to 2015)*.

referrals are subject to individual assessment and, for the period 2010–11 to 2013–14, 55 per cent of these referrals were escalated to audits. In contrast, the FWO's lists are assessed collectively, using a risk assessment and case selection approach aimed at selecting a small number of the highest risk cases for audit (see Chapter 4, paragraph 4.27). Consequently, of the 812 records provided by the FWO since March 2013, only 21 (three per cent) were escalated to audit.

2.35 The ATO has limited resources to conduct active compliance work, in particular audits, and only escalates those cases it considers to be the highest risk. Nevertheless, the employers referred by the FWO represent a readily identified source of likely non-compliance. The ATO could more thoroughly assess the FWO records, and if not selecting these cases for audit, could consider a 'lighter touch' approach such as sending a letter to the employers identified by the FWO indicating that the ATO has received information on their potential non-compliance, and requesting them to check their records and address any discrepancies.

Consultative forums and other forms of stakeholder engagement

2.36 The ATO engages and communicates with stakeholders on SG matters via joint projects, public interventions (speeches, media communication) by senior ATO officials, and five key consultative forums on superannuation matters. From time to time, the ATO may also establish special purpose groups to consult on specific matters, or partner with a superannuation industry entity for specific projects. One such partnership was undertaken in 2011 with the Industry Funds Forum.

2.37 The ATO's consultative arrangements for superannuation are a mix of strategic, stakeholder management and information sharing forums, and provide the ATO with an opportunity to engage with stakeholders on major policy and administrative issues affecting the superannuation system. Although the ATO determines the membership of all forums, there is representation from the range of superannuation industry entities. Individuals and entities can also register their interest in participating in some stakeholder forums through the ATO consultation hub.¹⁰⁴

104 The ATO consultation hub coordinates all consultations between the ATO and the community.

2.38 Superannuation funds are the primary source of information for employers and the community and most funds run education activities for employers and employees using media campaigns, online channels and social media. Typically, individual superannuation funds' websites provide employers and employees with information about their SG obligations and entitlements, with links to key ATO web-pages and online tools. Industry messages are complementary to and reinforce the ATO's messages. The ATO aims to manage the risk of 'market congestion' by controlling the release of campaign launches to fund stakeholders; and using its consultative mechanisms to co-ordinate government entity campaigns.

2.39 The existing forums relating to SG provide the ATO and superannuation stakeholders with adequate opportunities to share information and discuss the major policy, administrative and implementation issues. In particular, in a context where the ATO is not alone in distributing information about superannuation to the general public, the forums offer assurance that messages are consistent and reinforce each other.

2.40 Several superannuation stakeholders involved in the ANAO consultations were participants in specific ATO consultative forums or projects. They welcomed the ATO's recent efforts to build relationships, work jointly and share information, especially in relation to the implementation of 'SuperReforms'.¹⁰⁵ However, these stakeholders, and others who did not have the opportunity to be involved in ATO consultative forums, also indicated that more systematic discussion and exchange of information relating to compliance would be beneficial to the ATO, enabling better and earlier detection and deterrence of non-compliance (while complying with privacy obligations). A common theme from the ANAO stakeholder consultations was how the superannuation industry and other stakeholders, such as trade unions, and the ATO, could better work together to identify and act on non-compliance at an early stage. All industry superannuation fund stakeholders consulted believed they could be a resource for the ATO, and as a whole, would welcome greater opportunities to contribute to the ATO's processes.

105 SuperReforms are a suite of government reforms introduced with the aim of providing a more efficient superannuation system.

2.41 Many superannuation stakeholders, including industry superannuation funds, clearing houses, arrears collection companies or organisations such as Fair Work Building and Construction¹⁰⁶ have close relationships with their industry, employer and employee representatives that enable them to follow-up and assist employers having difficulty meeting their SG obligations. Most industry superannuation funds have well established early intervention strategies to pursue and collect arrears and employ debt collection services, such as the IFCC (as shown in Table 2.5). Other funds, such as retail funds, typically leave the monitoring of employer compliance to members.

Table 2.5: Case Study—Cbus arrears process

Cbus is an APRA-regulated industry superannuation fund predominantly representing employers and employees in the construction and building industry. It has over 700 000 members and 85 000 participating employers (the majority of which are from the industry), with more than \$27 billion funds under management. Nearly all businesses in the construction industry are small businesses that, collectively, employ 82 per cent of the one million or so people in the industry. Sham contracting, insolvency and fraudulent phoenix activity are known issues within the industry.

Employers joining Cbus enter into a contract to pay superannuation contributions by the first day of the following month. Where employers fail to make the necessary payments, Cbus has an arrears collection process rolled out over 48 days:

- 18 days after the due date employers are sent an arrears letter;
- if arrears are still present 10 days later, employers are sent a second letter. Employers with more than 10 employees are also contacted by telephone; and
- 20 days later, if no payment has been made, Cbus refers the debt to its credit control agency, the IFCC.

The IFCC makes a seven-day demand telephone call to the employer. Ten days after the demand call, employers are sent a letter by a solicitor. Should this not result in a repayment agreement, legal action is commenced.

Cbus has found that early detection of non-compliance and intervention increases the likelihood of recovering outstanding payments. It estimates that in 2013–14:

- approximately \$54 million in superannuation payments was collected on behalf of 96 000 members from its arrears collection process; and
- an additional \$55 million in unpaid superannuation was further recovered by the IFCC.

Source: ANAO analysis of stakeholder submissions.

106 Fair Work Building and Construction is the Australian Government building industry regulator. Since 1 June 2012 it has replaced the Office of the Australian Building and Construction Commissioner.

2.42 The ATO estimates that the top 15 fund administrators and top 20 funds have more than 90 per cent of all members. This concentration of membership provides the ATO with an opportunity to access information on compliance, eliminate some of the duplication in compliance work that can occur when both the ATO and the funds undertake compliance action simultaneously, and eventually offset some of the existing disadvantages of the SG Scheme operating largely outside of the ATO sphere of control. As the ATO is aware, a significant impediment to the recovery of unpaid SG is the time elapsed before a complaint is made by the employee and the additional time needed for the ATO to address the complaint. Funds, clearing houses and arrears collection companies have access to real-time information on unpaid SG amounts, which could contribute to follow-up of high-risk employers, particularly small businesses, promptly after the SG quarterly obligation deadline has passed.

2.43 Currently, none of the ATO's consultative forums for superannuation capture intelligence on compliance activities being undertaken by other superannuation industry entities, such as the arrears programs of industry funds. While the ANAO consultations indicated that these entities are generally willing to collaborate more closely with the ATO on compliance issues, the ATO advised that this has not previously always been the case. In particular, some superannuation funds consider employers to be their primary clients, and they are reluctant to jeopardise the relationship by providing compliance information to the ATO. Nevertheless, there would be benefit in the ATO further engaging with superannuation entities about the provision of information about employers that are systematically non-compliant with SG obligations. Depending on the results of these consultations, the ATO could also explore options for information sharing with these stakeholders, for example through formal arrangements, perhaps based on the type of agreement with the FWO.¹⁰⁷

107 There are examples of partnerships with industry to share information and develop more effective business strategies. For instance, the Australian Cyber Security Centre (an Australian Government initiative to support the security of Australian information networks) reported considering a number of models for partnering with industry that would allow close engagement on information sharing and the development of response strategies. Australian Signal Directorate, *Australian Cyber Security Centre*, Available from <<http://www.asd.gov.au/infosec/acsc.htm>> [accessed 17 November 2014].

Conclusion

2.44 The ATO considers that, overall, employers demonstrate high levels of compliance with their SG obligations. This assessment is largely based on two key measures: overall employer SG contributions exceed the statutory percentage of salary and wages paid (9.5 per cent in 2013–14); and employee notifications received by the ATO are low as a proportion of all employees (less than 0.02 per cent in 2013–14).

2.45 However, the ATO's assessment of the rate of SG contributions uses a methodology that presents some data limitations, including that the estimation of SG contributions requires data from two sources, RESC and Member Contribution Statements, which poses challenges for identity matching and the consistency of reporting. In relation to the low proportion of ENs as an indicator of employer compliance with SG, research demonstrates that employees are reluctant to complain to the ATO about unpaid SG; and the measure does not account for the complaints and compliance work conducted by other superannuation stakeholders.

2.46 In this regard, there is potential for the ATO to increase the use of external information sources to obtain a more complete analysis of non-compliance with SG obligations. Since many superannuation industry external stakeholders have early visibility of possible non-compliance and conduct compliance activities, developing a closer relationship with these stakeholders would enhance the ATO's risk identification processes and allow the ATO to more promptly and effectively address non-compliance.

2.47 The SG Scheme may work well for most Australians, particularly those in more secure, better paid employment. However, those in the workforce most likely to rely on the age pension in retirement are at greater risk of not receiving their full SG entitlements. If inadequate levels of SG contributions are made, this reliance is likely to be increased, which in turn can generate a greater burden on the taxpayer and on the nation's budget. The ATO understands this mixed picture of compliance but tends to rely on the more positive view. This is notwithstanding an internal risk assessment that estimated that between 11 and 20 per cent of employers were not meeting their SG obligations. The ATO's view may be sound at an aggregate level. However, given the scale of the Scheme and the flow of revenue generated, the aggregate position can mask non-compliance affecting significant numbers of employees, in particular among the lower paid sections of the workforce.

2.48 The work initiated by the ATO in 2015 on the ‘SG gap’ should improve the ATO’s capacity to identify and assess the risk of non-compliance with SG obligations. In the meantime, there is scope for the ATO to review its assessment of non-compliance in market segments and categories of workers most at risk.

Recommendation No.1

2.49 To provide greater assurance of the level and nature of non-compliance with Superannuation Guarantee obligations, the ANAO recommends that the ATO:

- (a) better analyses non-compliance, including at the industry sector levels and among the categories of employees most at risk; and
- (b) further engages with external stakeholders involved in Superannuation Guarantee compliance activities.

Australian Taxation Office response:

2.50 *Agreed. We are commencing work to measure the SG gap, including industry analysis which will aid in providing a more accurate estimation of SG compliance.*

2.51 *Through the Tailoring the Employer Experience with Superannuation project commencing 1 July 2015 we will be able to better assess systemic risks with employer non-compliance.*

2.52 *Through our relationships with the superannuation industry we will explore opportunities to pilot some collaborative approaches with superannuation industry compliance bodies.*

3. Promoting Voluntary Compliance

This chapter examines the ATO's arrangements to encourage voluntary compliance with Superannuation Guarantee obligations. It also assesses the ATO's contributions to improving Superannuation Guarantee legislation.

Introduction

3.1 The ATO states that it is committed to fostering willing participation by making it easy for people to comply with their taxation and superannuation obligations, while addressing the section of the community that does not meet their obligations and deterring others from non-compliance.¹⁰⁸ These objectives form an important component of the SG compliance strategy.

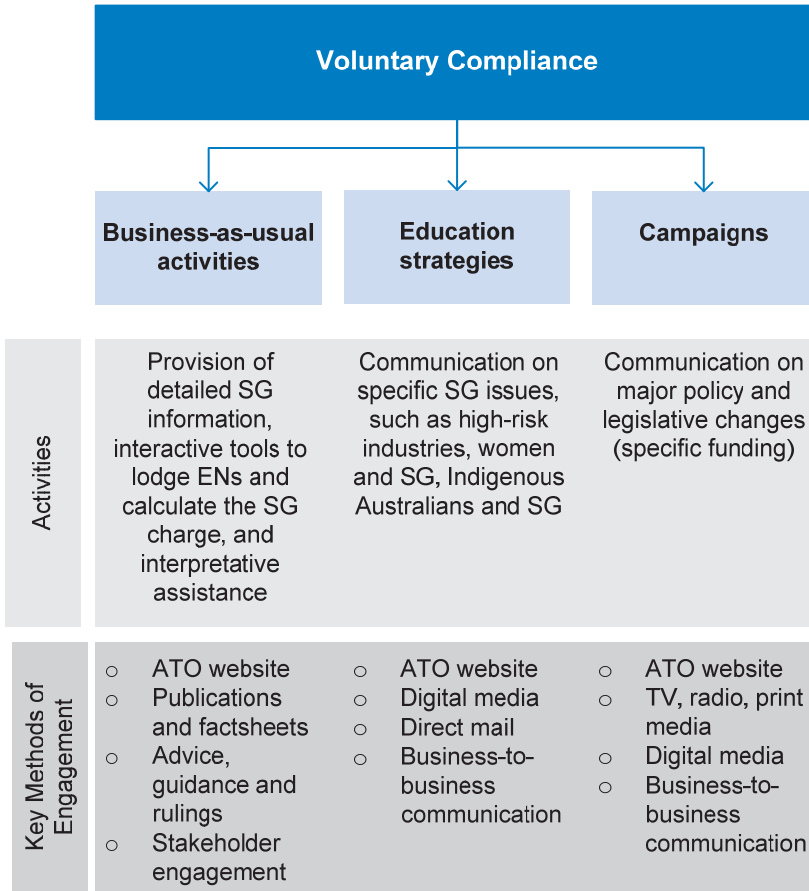
3.2 In relation to voluntary compliance activities, the *Taxpayers' Charter* commits the ATO to providing accurate, consistent and clear information to help people understand their rights and entitlements, and meet their obligations.¹⁰⁹ To satisfy this commitment, the ATO provides information to employers and employees in a number of ways, including through its website, online calculation tools, media campaigns and communication and education strategies. The provision of information and tools to help people manage their taxation and superannuation affairs is a significant part of ATO's activities to make compliance easier. The ATO groups these voluntary compliance activities into three categories in the administration of SG (Figure 3.1):

- business-as-usual activities, which focus on providing tools and detailed information on SG matters;
- education strategies, which aim to address specific SG risks in defined populations, such as high-risk industries; and
- campaigns, which can be conducted on SG-specific topics or on more general superannuation matters. Specific funding is usually allocated for these major communication activities.

108 ATO, *Corporate Plan 2014–18*, pp. 23–29. Available from <https://www.ato.gov.au/uploadedFiles/Content/CR/downloads/js32219%20ATO%20Corporate%20Plan%202014_w.pdf> [accessed 20 November 2014].

109 ATO, *Taxpayers' charter: If you're subject to review or audit*, April 2013. Available from <<https://www.ato.gov.au/About-ATO/About-us/In-detail/Taxpayers--charter/Taxpayers--charter---if-you-re-subject-to-review-or-audit/>> [accessed 17 December 2014].

Figure 3.1: Key SG voluntary compliance activities



Source: ANAO analysis.

3.3 To assess the ATO’s strategy and activities to support voluntary compliance with SG obligations, the ANAO examined these three voluntary compliance categories. The ANAO also examined the ATO’s activities to clarify and improve the SG legislation.

Business-as-usual voluntary compliance activities

ATO website

3.4 Business-as-usual activities involve the provision to the public of information, advice, guidance and rulings about the SG Scheme, disseminated through the ATO website and the other channels outlined in Figure 3.1. The ATO website is an essential communication tool. It includes: electronic versions

of the publications available from shopfronts and on demand by phone; the forms that employers must complete to lodge a SG charge statement; and the interactive tools to calculate SG contributions, calculate and lodge an employee notification for unpaid SG, and establish SG eligibility. The most popular webpages aimed at employers and employees recorded between 180 000 and 250 000 visits¹¹⁰ between November 2013 and October 2014 (Table 3.1).

Table 3.1: Most popular SG webpages, November 2013 to October 2014

Webpages	No. of visits
Guide to superannuation for employers	253 290
Super Guarantee contributions calculator	218 229
How much to pay and when to pay	189 365
Compulsory employer contributions	186 161
Working out if you have to pay super	95 926
If you haven't met your obligations	65 130
SG charge statement—quarterly form and instructions	42 624
Employee eligibility	31 032

Source: ATO.

3.5 Superannuation information is readily accessed from the ATO homepage by clicking on one of the five key tabs. In parallel to this entry point, the ATO has developed a new approach to communicate with taxpayers, focusing on specific client segments. Particularly relevant to SG are the webpages developed in consultation with representatives from small businesses to make it easier for this segment to locate and understand key compliance obligations. The resulting 'Small business newsroom' (accessible from the home page) features a 'super' tab listing the next SG payment cut-off dates, information on the increase in the SG rate and key changes affecting employers under the SuperStream reforms.

3.6 The website also gives access to online decision tools and calculators that can assist employers and employees to determine and manage their SG obligations and entitlements. Table 3.2 presents the four tools specifically

110 A 'visit' refers to a user's browser session during which multiple and different pages can be viewed in a visit. Where a report shows a web page has 10 views and six visits, it means that the page was viewed a total of 10 times across six different visits.

relevant to SG, and the number of visits to each of these tools between November 2013 and October 2014.

Table 3.2: SG online decision tools and calculators—number of web visits, November 2013 to October 2014

Online calculators and decision tools	Number of visits
Employer SG eligibility decision tool	116 272
Employer SG charge statement and calculator tool ¹	104 214
Employee SG calculator ²	108 288
Employer SG contributions calculator	96 217

Source: ATO.

Note 1: The employer SG charge statement and calculator tool helps employers to calculate their SG charge liability, and produces a SG charge statement that employers must print and send to the ATO.

Note 2: The employee SG calculator enables employees to calculate the amount of their SG entitlement and establishes whether their employer is paying the correct amount. The same tool is used to lodge an EN electronically.

3.7 The ANAO tested these four tools to assess the extent to which they met the ATO's objective of making it easier for employers to comply with their SG obligations and for employees to engage with the superannuation system.

Employer SG eligibility decision tool

3.8 This tool requires employers to answer a series of questions to establish an employee's SG eligibility. The questions require a simple yes or no answer and seek to clarify the worker's employment status, age, amount earned, and hours worked. A report is produced indicating whether the employee is eligible or not. The ATO's estimation of the time required to complete the tool is between one and five minutes, which seems a realistic estimate in most circumstances.

Employer SG charge statement and calculator tool

3.9 Employers who have not met their SG obligations¹¹¹ are required to lodge a SG charge statement with the ATO, by either:

111 Employers are required to pay the SG charge for a quarter where they did not pay: any or enough SG; the SG amount by the quarterly cut-off; or SG to an eligible employee's nominated superannuation fund for any quarter with a start date on or after 1 July 2005.

- completing a hardcopy paper form which is available from the ATO's website, shopfronts, or on request by phone; or
- using the online SG charge statement and calculator tool. The online tool calculates the employer's SG liability and produces a statement that must be printed and sent to the ATO.¹¹²

3.10 A separate statement must be completed for each employee and each quarter for the period during which SG was not correctly paid. Whereas, on the paper form, the employer must calculate the SG shortfall, choice liability¹¹³, nominal interest component and administration component, the online calculator performs these calculations automatically.

3.11 The online version of the SG charge statement requires significantly more information than the paper form to enable the tool to automatically calculate the shortfall. The ATO website indicates that, assuming that employers have at hand all the necessary information, completing the online statement will take between five and 10 minutes per employee per quarter. Using this estimate, an employer with unpaid SG for 12 months (four quarters) and 20 employees would spend a minimum of 6.5 hours completing the online form.

3.12 Another option exists for employers to calculate a SG charge statement. The ATO has developed an electronic spreadsheet version of the paper form, which is a simpler, faster and more reliable option to lodge a SG charge statement. However, the spreadsheet is not available publicly and is not offered systematically or consistently to employers. The ATO advised that the spreadsheet is intended to be used, primarily, by employers with more than 50 employees or employers who have indicated their preference for the spreadsheet. Given that the spreadsheet is not publicised or publicly available, it is unlikely that employers will be able to indicate their preference, unless they are in direct contact with a compliance officer who remembers to inform them of the existence of the spreadsheet. The ATO was not able to provide

112 In January 2015, the ATO introduced a new version of this tool that is accessible via the business portal on the ATO's website. The ATO advised that this version is more streamlined, for example allowing employers to lodge one statement for multiple quarters.

113 Choice liability is part of the SG charge where employers do not give their eligible employees a standard choice form or fail to pay super contributions to their chosen complying fund. The liability is equal to 25 per cent of the contributions the employer paid that did not meet their choice of superannuation fund obligations, to a limit of \$500 per notice period per employee.

statistics on the use of the spreadsheet, but advised that work is underway to make the spreadsheet available on the ATO website.

3.13 Employers that voluntarily lodge a SG charge statement are seeking to remedy their non-compliance with SG obligations. The publicly available paper and online versions both impose a significant administrative burden on employers if they are dealing with more than a few employees and quarters. This burden has the potential to act as a deterrent to employers.

3.14 The tools that currently exist to lodge the SG charge statement may cause a degree of confusion among employers. Further, two of these tools generate a high level of administrative burden, and the other two, simpler tools, have restricted access. To make it easier for employers to comply with their SG charge reporting obligations, continued efforts are needed to further simplify the lodgement of the SG charge statement.

Employee SG calculator

3.15 If employees believe they have not received the correct SG amount, the ATO website provides an option to lodge an EN using an online tool, which includes a link to the SG calculator. The SG calculator can help employees: determine if they are eligible for SG contributions; establish whether their employer is paying the correct SG amount; and prepare and lodge an EN. The ATO estimates that the tool should take one to five minutes to complete for each quarter for which the employee wishes to assess SG contributions.

3.16 The tool requires employees to have retained and understood detailed and complicated salary and superannuation information. Unless the period of unpaid SG is relatively recent and the salary situation simple (that is, no salary was sacrificed and most payments made to them by their employers were base salary and wages), it is likely that the completion of the online tool would present significant challenges. Accordingly, the tool could act as a disincentive to lodging an EN.¹¹⁴ To improve employee access, there would be merit in the ATO addressing these weaknesses, including by reducing the amount of information requested. Further, considering the difficulties presented by the tool, and the likelihood that many employees may not succeed in lodging their

114 Between November 2013 and October 2014, the tool received over 100 000 visits (Table 3.2); but only around 20 per cent of ENs were lodged using the tool during the period 2010–11 to 2013–14 (see Chapter 4 Table 4.2).

notification using the tool, other options to lodge an EN (including by correspondence or telephone) should be presented.¹¹⁵

3.17 In the course of this audit, the ATO advised that a re-design of the EN lodgement tool is scheduled to be implemented by June 2015. The proposed re-design aims to significantly improve the useability of the tool and double the percentage of ENs lodged online (to 40 per cent) by late 2016. The ATO considers that this remodelling has the potential to address most of the weaknesses of the tool and to considerably improve the ease of EN lodgement for employees.

Employer SG contributions calculator

3.18 The employer SG contributions calculator enables employers to calculate, for all employees in their business, the amount of SG contribution that the employer must make. Links are provided to help calculate these amounts if needed (including how to estimate ordinary time earnings). The tool applies the compulsory 9.5 per cent SG to this amount and provides a report on the contributions to be paid for each employee and in total. It is simple and clear and its completion would not require, under normal circumstances, more than the one to five minutes that the ATO estimates.

Interpretative advice

3.19 Business-as-usual activities also include interpretative assistance, which outlines the Commissioner of Taxation's opinion on the application of taxation and superannuation law. Interpretative assistance is a cornerstone of the ATO's self-assessment and compliance regime and aims to provide accurate, consistent and clear information to help taxpayers understand their rights and meet their obligations.¹¹⁶ In addition to setting out the Commissioner's opinion on the application of a provision of a law for the benefit of stakeholders, interpretative assistance helps ATO staff to apply the law consistently. In relation to SG, interpretative assistance decisions cover a range of topics such

115 In this regard, a particular consideration is for temporary residents working in Australia. As these employees may uncover issues of unpaid superannuation when they attempt to claim their benefits after they have left Australia, the 'Unpaid Super' ATO webpage should mention the existing number for overseas inquiries, and not only the 1300 number, only accessible from within Australia.

116 ATO, *Taxpayers' Charter: What you need to know*, June 2010, p. 9. Available from <<https://www.ato.gov.au/About-ATO/About-us/In-detail/Taxpayers--charter/Taxpayers--charter---what-you-need-to-know/>> [accessed 5 February 2015].

as application of the SG charge in various circumstances and choice of fund. The ATO has issued 54 interpretative decisions (including 27 now withdrawn), 53 rulings and determinations, 14 case decisions summaries, two explanatory statements, two Law Administration Practice Statements, and two legislative determinations.¹¹⁷

Education strategies

3.20 Education strategies are informed by two main sources; market research, and analysis of active compliance outcomes. The ATO regularly conducts surveys to monitor community views. The 13th Community Perception Survey (September 2012) contained nine questions relating to superannuation and two specifically to SG. In addition, the ATO has recently commissioned three large market research projects exploring perceptions of superannuation and SG in the Australian community and by employees and employers.

3.21 Table 3.3 summarises the key findings relating to SG from these three bodies of work.

Table 3.3: SG: perceptions in the Australian community and among employees and employers

Perceptions in the Australian community

Australians have a reasonably high level of confidence in the ATO's administration of the superannuation system; 78 per cent of those surveyed in 2012¹, and provided an opinion, agreed or strongly agreed that they have confidence. However, 39 per cent of those surveyed did not provide an opinion in relation to this question. Superannuation is now part of most Australians' lives, but there are still moderately high levels of misunderstanding about it. Notably, of all respondents to a 2012 survey: around half (48 per cent) considered they had a good understanding of the superannuation system; less than half (42 per cent) were able to specify the minimum employer super contribution rate; around 20 per cent reported being aware of contribution limits; and very few (three per cent) used the ATO as a source of information about super matters.

Continued on next page

¹¹⁷ Interpretative assistance provides the Commissioner of Taxation's opinion on the application of taxation and superannuation law. For example, a public ruling is a published statement of the Commissioner's opinion on how a particular provision applies or would generally apply while a determination deals with a discrete issue that can usually be dealt with by answering a single question.

Perceptions among employees

Employees value their SG contributions, with research conducted in 2013² finding that 90 per cent of employees considered superannuation extremely or somewhat important, and 80 per cent had an interest in SG. However, knowledge about SG entitlements was fairly low, with 49 per cent of employees surveyed indicating that they are somewhat or extremely knowledgeable, and 40 per cent that they were not aware that the ATO is responsible for administering the SG Scheme. Only a minority (13 per cent) had ever wanted to make a complaint about SG contributions, but half of these employees did not actually complain, mostly because they feared losing their job or angering their employer. Lack of knowledge about what to do was also a factor.

Perceptions among employers

According to research conducted in 2010³, businesses generally find managing their superannuation obligations to be easy (74 per cent), mainly because they have in place a simple process to make the required payments. Those employers who find it difficult to manage their superannuation obligations largely have different requirements and funds across a number of employees. Almost all businesses feel they have sufficient information to meet their SG obligations (95 per cent).

Thirty-four per cent of employers have at some point been late making SG payments including 20 per cent that had made late payments on multiple occasions. The incidence of making late payments is more prevalent among businesses with fewer staff (39 per cent of micro businesses—up to five staff); compared to 11 per cent of large businesses—100 or more staff). The most common reasons for late payments were oversight (32 per cent) and cash flow problems (26 per cent). One third of businesses would do nothing in cases of late payment, while others would contact the employee (23 per cent), the superannuation fund (17 per cent) or a Government agency (15 per cent). Half of those who would contact a Government agency would contact the ATO.

Sources: 1. ATO, *Community Perceptions Survey*, September 2012 Report, November 2012;
2. GfK Australia Pty Ltd, *Superannuation Guarantee Research*, August 2013; and
3. Colmar Brunton Social Research, *Attitudes to Superannuation* (three reports), January 2010.

3.22 Education strategies are usually developed by the Marketing and Communication Team in collaboration with the SG Team, and target specific SG issues or population groups. For 2014–15, five communication objectives and six key messages were identified (Table 3.4).

Table 3.4: SG communication objectives and key messages

Communication objectives	Key messages
<ul style="list-style-type: none"> • Educate employers about their SG obligations—which employees are eligible, and how much must be paid and by when. • Remind employers about key SG dates—such as the quarterly payment dates. • Promote tools and resources that help employers understand and comply with their SG obligations. • Provide easy access to forms and online content for employers. • Educate employers about the ATO's SG compliance approach. 	<ul style="list-style-type: none"> • Employers may need to make compulsory SG payments for their employees. • Currently, employers must pay a minimum of 9.5 per cent of eligible employees' ordinary time earnings each quarter. • Employers must pay SG contributions into a complying superannuation fund or retirement savings account. • Some employees are entitled to choose a superannuation fund. Employers must provide a form to enable these employees to exercise that choice. • The ATO has a range of online tools to help employers understand their SG obligations. • Employers that don't pay the right amount by the due date to the correct fund must lodge a SG charge statement with the ATO and pay the SG charge.

Source: ANAO analysis of ATO documents.

3.23 Employers are the primary target audience, further divided into two subgroups: small employers—those with less than 20 employees; and all other employers. The education strategies are supported by business-as-usual activities, including digital media elements. These strategies include:

- the high-risk industry strategy—using information from ENs and audit compliance work, the ATO has identified industries that are more likely to be non-compliant with SG obligations. Since 2008, the strategy has targeted industries identified as high-risk on six separate occasions, with each round targeting three to four industries (discussed further in Chapter 4); and
- population or issue-specific strategies—since 2011–12 the issues identified by the ATO, using market research, to develop education campaigns have included: calculating OTE for SG in the trucking industry; culturally diverse audiences and SG; women and SG; and using the Small Business Superannuation Clearing House.

3.24 While the education strategies do not explicitly refer to the SG enterprise or operational risks, they are, in practice, well aligned with these risks. The communication objectives and key messages are clear and concise,

and the strategies identify the target audiences and the media channels to be used to disseminate messages, drawing on the ATO's research as appropriate.

Communication campaigns

3.25 In recent years, a key focus of the Superannuation business line campaign has been the significant changes affecting the operation of the superannuation system: SuperReforms¹¹⁸; and the increase in the rate of SG. To help ensure consistent messaging, the SG communication strategy indicates that all communications relating to SG are to be assessed against 'SuperStream' messaging.

3.26 The Superannuation business line also disseminates SG messages through other ATO media and strategies and government agency campaigns. Recent examples included:

- Tax Time—provides tax practitioners and individual taxpayers with comprehensive information relating to lodgement of annual taxation returns, and 'Tax, super + you', an online youth education resource package launched in July 2012; and
- ASIC's Money Smart Week¹¹⁹—In 2014, the ATO's contribution focused on the five step superannuation check for individuals, a key component of the ATO's 'Women and super' education strategy.

3.27 Media campaigns and education strategies are generally evaluated by the ATO. Typically, evaluation measures include analysing: website visits and views on campaign and related pages; monitoring social media activities (such as comments, likes, and shares on social media); media coverage; and call centre logs. For media campaigns, the results for television, radio and print media are also analysed. A review by the ANAO of the evaluation reports available for the main education strategies and campaign suggested mixed results. While some marketing activities, such as the education strategy aimed

118 These reforms include 'MySuper' accounts, which must be offered, from July 2014, by all superannuation funds. These accounts have simple features, lower fees and a single diversified investment option or a lifecycle investment option. The SuperReforms also include 'SuperStream', which is a set of minimum conditions for data and payment transmission that employers and funds must comply with from 1 July 2015 for APRA funds and medium to large employers (20 or more employees), and from 1 July 2016 for small employers (less than 20 employees).

119 ASIC's Money Smart Week is an annual campaign to promote MoneySmart, a personal finance website that is the central website for consumers on superannuation matters, providing free information and tools to help individuals make sound financial decisions.

at women, were very successful, others did not achieve the expected impact, and prompted the ATO to consider alternative approaches for future activities.

3.28 A key finding from ATO's market research is that while most employers now have a good understanding of their SG obligations, they are not generally aware of the role of the ATO in relation to the operation of the SG system and do not see the ATO as the primary source of information on SG. Further, several stakeholders consulted by the ANAO identified employer knowledge of the consequences of SG non-compliance as an issue requiring attention and did not think that employers, in general, were concerned about being penalised in the event of non-compliance. There would be benefit in the ATO considering, in future marketing and education initiatives, raising awareness, among employers and employees, of the ATO's role in addressing non-compliance with SG obligations.

Recommendation No.2

3.29 To more effectively encourage employers to comply with their Superannuation Guarantee obligations, the ANAO recommends that the ATO increases the emphasis on the ATO's role in enforcing compliance in its communication and marketing activities.

Australian Taxation Office response:

3.30 *Agreed. This aligns well with our Building Confidence compliance approach currently being developed. We will identify opportunities to emphasise the ATO's role in super guarantee compliance more broadly in our general program of communication activities and products.*

3.31 *In addition, we believe that an emphasis on our enforcement role is appropriate in our targeted messaging of high risk industries, and where we consider there is a high risk of SG non-compliance. Therefore our communication to employers at high risk is targeted and often contains compliance messaging. We will review these types of communications and ensure our role in enforcing compliance has been communicated sufficiently.*

Clarification and improvement of Superannuation Guarantee legislation

3.32 To facilitate their joint stewardship of the tax system and some aspects of the superannuation system, including the SG Scheme, the Treasury and the ATO have developed a protocol providing a framework for the working arrangements between the two agencies.¹²⁰

3.33 The Treasury is responsible for providing advice to government on policy and law design issues; and the ATO's administrative, compliance and interpretive assistance experience should contribute to the policy and legislative design processes coordinated by the Treasury. To develop its views on the interpretation of superannuation law, the ATO is expected to consult with the Treasury; and where the ATO identifies that the legislation is not operating consistent with the policy intent, the ATO should provide advice to the Treasury recommending law change.¹²¹

3.34 Formal and informal means of collaboration exist between the Treasury and the ATO to meet the objectives described in the protocol. Informally, day-to-day contact occurs to resolve ad-hoc issues such as responses to ministerial correspondence. The Treasury receives between five and 10 ministerial letters a month relating to SG, mostly originating from employees. Formally, the two agencies meet regularly (approximately every six weeks) to discuss policy issues. The ATO also develops minutes, briefings and presentations addressing specific issues it wants to draw to the Treasury's attention.

3.35 Importantly, the ATO submitted two reviews of SG to the Treasury in recent years (May 2008 and May 2014).¹²² Both reviews are extensive documents aimed at simplifying SG law and reducing unnecessary regulation and costs on businesses, with the intent of making it easier for employers to comply and assisting the ATO to detect and remedy non-compliance. The reviews include recommendations to improve the policy, law and administration of SG. Two of the 11 recommendations from the 2008 review

120 ATO, *Treasury and the ATO Tax and Superannuation Protocol*, 10 September 2012. Available from <<https://www.ato.gov.au/General/New-legislation/In-detail/ATO---Treasury-protocols/ATO---Treasury-protocol/?anchor=P62-8906#P62-8906>> [accessed 27 November 2014].

121 ATO, *Treasury and the ATO Tax and Superannuation Protocol*, 10 September 2012.

122 ATO, *Superannuation Guarantee—Review*, 5 May 2008; ATO, *Superannuation Guarantee—Review*, May 2014.

have been implemented; another four were reiterated in the 2014 review. The 2014 review also included 13 new recommendations.

3.36 Overall, both agencies agreed that their working relationship is cordial and productive. The reviews, minutes and meetings demonstrate that the ATO is active in its role of providing advice to the Treasury on potential improvement or clarification of the SG Act, and seeking confirmation or clarification of the interpretation of this legislation.

Conclusion

3.37 The ATO's voluntary compliance arrangements are designed to raise awareness among SG stakeholders, to educate employers about their SG obligations and employees about their SG entitlements, and support both groups with the provision of online tools. The ATO website provides extensive and current information on superannuation matters and, considering the complexity of the information available, the pages relating to SG are clearly presented and relatively accessible to employers and employees. The new 'Small business newsroom' offers a different and potentially more effective approach to supporting employers most at risk of non-compliance with their SG obligations. As such, the website represents a useful channel for disseminating other forms of communication, such as media campaigns.

3.38 Key online tools are available to assist both employers and employees to understand, comply and engage with SG obligations. While some of these tools are easy to use, the two most important, designed to calculate SG contributions and the SG charge (and to lodge employer SG charge statements) and employee notifications, can be difficult and time consuming to use, and accordingly could act as a deterrent to both employees and employers in engaging with the ATO to ensure their SG rights and obligations are met.

3.39 The education strategies and campaigns are aligned to the SG enterprise and operational risks. The ATO's focus on employers and key stakeholders recognises their critical roles in the effective operation of the SG Scheme, while the strategies focusing on specific population groups are informed by market research and active compliance work. Given the significance of the SuperReform changes, most recent education messages have focussed on the impact of these changes for employers. Another focus of the recent education campaigns has been the increase in the rate of SG. While not specifically targeting SG compliance, these campaigns can indirectly contribute

to raising awareness of SG obligations and entitlements among employers and employees.

3.40 A key market research finding is that while most employers have a good understanding of their SG obligations, they are not generally aware of the ATO's role in relation to the operation of the SG Scheme. Some stakeholders consulted by the ANAO also identified employer knowledge of the consequences of SG non-compliance as an issue requiring further attention. The ATO should increase the focus, in future communication and marketing activities, on the ATO's role in enforcing compliance with SG obligations.

4. Addressing Non-Compliance

This chapter examines the approach used by the ATO to identify and address non-compliance with Superannuation Guarantee obligations. It assesses how the ATO selects different categories of employers for active compliance activities. It also examines the two main aspects of its Superannuation Guarantee active compliance strategy: responding to employee notifications and conducting proactive audit work.

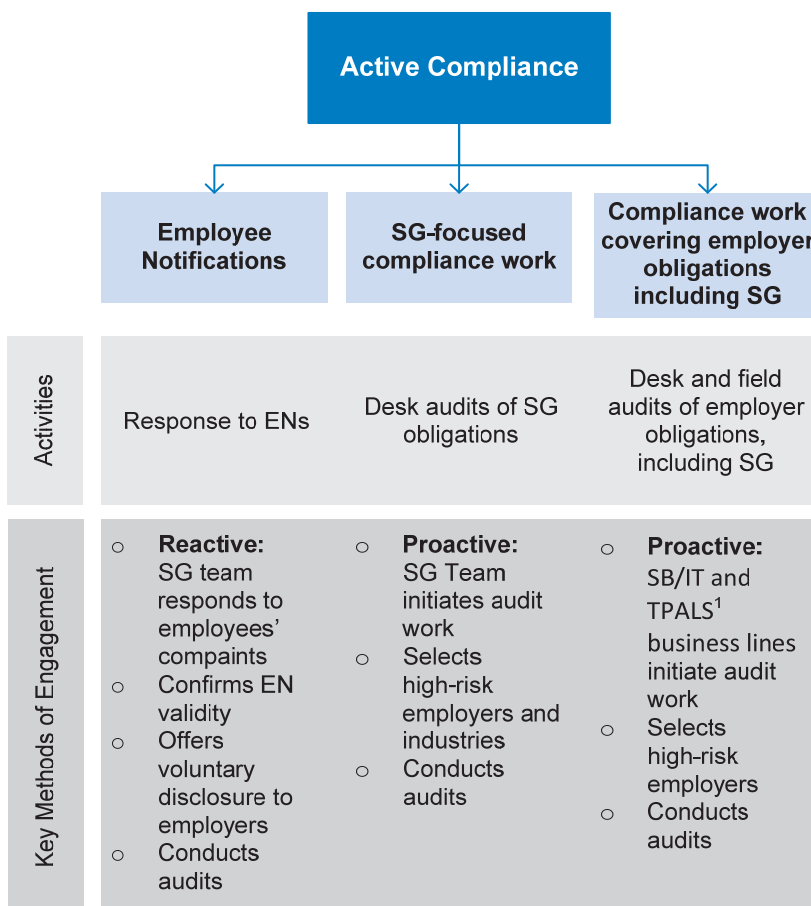
Introduction

4.1 The ATO dedicates considerable resources to active compliance activities. These activities often involve contact with employees when responding to their ENs and with employers when conducting audits on their SG obligations. It is important that active compliance activities are conducted transparently and in a timely manner to optimise the use of the ATO's resources, address employees' expectations and minimise the impost on employers.

4.2 Under the SG compliance strategy, active compliance work comprises two main tasks: responding to ENs; and conducting proactive work. Proactive work includes identifying higher-risk cases for audit; conducting audits focusing on compliance with SG obligations only; and conducting audits of compliance with employer obligations more broadly, including SG (Figure 4.1). The ANAO examined how the ATO:

- responds to ENs;
- selects employers for proactive compliance activities;
- conducts proactive audits; and
- collects and transfers the SG charge.

Figure 4.1: Key SG active compliance activities



Source: ANAO analysis.

Note 1: SB/IT: Small Business and Individual Taxpayers; TPALS: Tax Practitioners and Lodgement Strategy.

4.3 While ENs and proactive audits focusing on SG obligations are handled by different compliance teams, the audit process follows similar steps. These audits are, for the vast majority, desk-based and may involve telephone contact with the notifier and the employer. By contrast, wider audits of employer obligations (including SG) are generally field audits, involving visits to the employer’s business premises.

Responding to employee notifications

4.4 Once received, ENs are first processed by a ‘pre-audit team’ that checks that all necessary information is included in the notification. At this stage, ATO officers may contact the notifier to request additional details. Internal checks are also conducted, including verifying the employer’s status. A number of cases are closed at this stage, for instance when the employee chooses to withdraw the notification or when the employer is found to be insolvent.

4.5 Since October 2013, once the EN has been completed and validated as requiring audit work, the ATO sends a letter to the employer requesting that they verify having met their SG obligations or redress potential discrepancies voluntarily by lodging a SG charge statement. If employers do not respond to this letter satisfactorily, the ATO initiates an audit process.

4.6 The audit process involves the ATO establishing the employer’s compliance status before requesting evidence of SG payment from the employer. From that point, three situations can occur:

- the employer demonstrates that SG payments are up to date and accurate;
- a payment gap or delay is identified, the amount of missing SG is calculated and the employer must lodge a SG charge statement and pay the SG shortfall to the ATO within 21 days; or
- the employer does not respond to ATO requests and the ATO issues a default assessment, based on internal information, estimating the amount of SG due for payment to the ATO within 28 days.

4.7 Between 2010–11 and 2013–14, the ATO received, on average, over 18 000 ENs annually (Table 4.1).

Table 4.1: Employee notifications received, 2010–11 to 2013–14

Year	2010–11	2011–12	2012–13	2013–14
EN received (No.)	17 943	19 752	16 976	18 107

Source: ATO, Annual Reports 2010–11 to 2013–14.

4.8 Employees can lodge ENs through several methods, including by telephone, letter and using the ATO online lodgement tool. Most use the telephone (around three in four), with the number of notifiers selecting the online tool averaging 20 per cent over the last four years. As noted in Chapter 2, around two-thirds of notifiers are ex-employees or ex-contractors,

confirming that most employees wait until their relationship with their employer has ended to lodge a complaint (Table 4.2).

Table 4.2: Methods of employee notification lodgement and work status of the notifier, 2010–11 to 2013–14

Year EN received	2010–11		2011–12		2012–13		2013–14	
	No.	%	No.	%	No.	%	No.	%
Lodgement method								
Telephone	13 828	73	14 777	74	13 628	71	17 571	76
Online tool	3 827	20	4 216	21	4 371	23	3 738	16
Letter	1 047	6	850	4	1 251	6	1 612	7
Other	163	1	193	1	60	..	73	..
Notifier work status								
Ex-employee or ex-contractor	12 709	67	13 889	69	13 719	71	15 780	69
Employee or contractor	5 705	30	5 733	29	5 255	27	6 839	30
Other	461	2	418	2	338	2	383	2

Source: ANAO analysis.

Note: ‘..’ means less than 0.5 per cent.

Key outcomes

4.9 The ATO distinguishes between two key milestones in the treatment of ENs:

- an EN is ‘completed’ –when the ATO has completed the examination and reached a decision. This decision can be to raise a SG charge amount from the employer; or to close the case as ‘no further action’ (NFA), meaning that the ATO had not established that the employer was non-compliant, or the employer was non-compliant, and the ATO was unable to raise the SG charge (for instance because the employer had become insolvent); and
- an EN is ‘finalised’ –this is when the SG charge amount is paid by the employer, or when the ATO has closed the case because the SG charge could not be collected (written off).

4.10 The ANAO used the data collected by the ATO to analyse the outcomes of 52 242 ENs finalised between 2009–10 and 2012–13 (Table 4.3).¹²³ Over the period, the ATO found that 46 per cent of ENs finalised presented a compliance issue and led to a SG charge being raised, and collected the SG charge in 86 per cent of these ENs.

Table 4.3: Outcomes of employee notifications finalised between 2009–10 and 2012–13

Total employee notifications finalised (No.)	52 242
ENs completed as NFA (No.)	28 318
As a percentage of ENs finalised	54
ENs with SG charge raised (No.)	23 924
As a percentage of ENs finalised	46
Amount raised (\$)	70 million
ENs with SG charge collected (No.)	20 596
As a percentage of ENs with SG charge raised	86
Amount collected (\$)	59 million
As a percentage of amount SG charge raised	84

Source: ANAO analysis of ATO data.

4.11 Table 4.4 outlines the main reasons for not actioning ENs from 2009–10 to 2012–13. In 35 per cent of ENs completed as NFA, the ATO was unable to pursue a possible SG liability because the employer’s business was insolvent (bankrupt, liquidated, administered or deregistered). In one in four ENs (25 per cent), the employer had paid the SG late or the ATO did not identify that they had an SG obligation. For another 19 per cent of ENs, the employee withdrew the notification.

123 The ATO data used for this analysis is extracted from ATO’s *EN tracking reports at June 2013*. The reports analyse, at 30 June 2013, the ENs received between 2009–10 and 2012–13 (the 2013–14 tracking report was not available at the time of audit fieldwork). Out of 74 685 ENs received, 52 242 (70 per cent) were finalised at 30 June 2013. This sample includes only the ENs received and finalised during this period. It excludes ENs received before but finalised during the period, and the ENs received during the period but not yet finalised.

Table 4.4: Employee notifications finalised as ‘no further action’—key reasons, 2009–10 to 2012–13

Key reason	ENs finalised as NFA		Percentage of all ENs finalised (52 242)
	No.	%	
Insolvencies (bankrupt, liquidated, administered, deregistered)	10 008	35	19
EN withdrawn by employee	5 512	19	11
SG contributions already paid	4 108	14	8
No SG obligations identified by ATO	3 010	11	6
Other reasons	5 769	20	11
Total ¹	28 407	100	54

Source: ANAO analysis of ATO documents.

Note 1: Totals do not add to 100 per cent due to rounding. The total differs from the total in Table 4.3 due to a small ATO reporting error that does not affect the overall results.

Timeliness

4.12 The ATO has timeliness standards for processing ENs, and reports against these standards in the Annual Report. These standards were generally achieved between 2010–11 and 2012–13, and significantly exceeded in 2013–14 (Table 4.5).

Table 4.5: Timeliness of employee notification processing, 2010–11 to 2013–14

Standard for SG cases	Benchmark	2010–11	2011–12	2012–13	2013–14
1. Commenced within 28 days (%) ¹	99	99.0	99.9	99.2	99.6
2. Completed within 4 months (%)	50	55.2	46.0	50.8	70.7
3. Completed within 12 months (%)	90	99.6	99.5	99.7	99.8

Source: ATO, Annual Reports, 2010–11 to 2013–14.

Note 1: The benchmark for EN commencement was 100 per cent until 2012–13.

4.13 To verify ATO’s timeliness results, the ANAO analysed over 80 000 ENs completed between 2010–11 and 2013–14. The ANAO’s results were consistent with the ATO’s.

4.14 In his 2010 review, the Inspector-General of Taxation recommended that, in addition to measuring the time the ATO takes to reach a decision

(measured by the current timeliness standards), 'the ATO should measure the time it takes for an employee to receive their SG entitlement from the time that they lodge an EN complaint'.¹²⁴ The ATO addressed this recommendation and has been producing, since 2009–10, a series of annual internal reports, which track the progress of ENs received in a particular year.

4.15 The reports show that approximately 35 per cent of ENs are finalised within 100 days (that is, the notifiers are informed that the ATO has not established non-compliance, has collected the missing SG, or is unable to collect the missing SG), and another 35 per cent are finalised in approximately 300 days. However, the remaining 30 per cent take a significantly longer time to be finalised.¹²⁵

4.16 The time required to finalise ENs is not completely within the ATO's control, and depends on the employers' willingness or capacity to engage with the ATO and to pay their debts. However, reporting publicly the time taken to finalise ENs (rather than to reach a decision) would increase the transparency of the EN process, and could also act as a stronger incentive than the current timeliness standards for the ATO to improve performance.

Engagement with notifiers

4.17 The ATO has, over time, attempted to optimise the processing of ENs. In 2006–07, the ATO received additional budget funding of \$19.2 million over four years to implement a project aimed at improving communication with notifiers regarding the progress of their EN, and at addressing the backlog and achieving a more timely completion of ENs. Benchmarks for completion of cases were established for the first time, which led to a marked improvement in timeliness. A suite of letters was developed and issued to employees at key steps in the processing of their notifications.

4.18 The ATO identified, in 2008–09, that a significant proportion of letters were not issued or not issued correctly, mostly as a result of auditors not following procedures. In 2010, the Inspector-General of Taxation further identified that the content of the letter should be improved to offer more

124 Inspector-General of Taxation, *Review into the ATO's administration of the Superannuation Guarantee Charge*, March 2010, p. 72.

125 Of the 18 664 ENs received in 2009–10: 14 per cent (2684) were finalised within an average time of 23 months; 8 per cent (1421) were finalised in an average of 34 months; and 11 per cent (1966) were not finalised at 30 June 2013 and were on average 3.5 years old.

appropriate and personalised content. To address these issues, the ATO has reviewed the content of the letters, and developed a manual procedure to identify and redress instances when letters were not sent correctly.

Engagement with employers

4.19 Another component of the 2006–07 project to improve responsiveness to ENs involved the ATO engaging sooner with the employer to encourage voluntary compliance. As soon as the EN is received and assessed as valid and complete, a letter would be sent to the employer to inform them of a possible breach of their SG obligations and to offer them the opportunity to voluntarily lodge a SG charge statement or provide evidence to the ATO that the correct amount of SG had been paid. It was not until January 2013, however, that a trial for this measure was conducted (the ATO advised that between 2007 and 2013, voluntary disclosure was offered to employers by phone). Results revealed that approximately 30 per cent of employers provided a response within 28 days, allowing for rapid closure of these cases and minimal ATO intervention. The measure was implemented across all ENs in October 2013. It resulted in a marked improvement in the ATO's timeliness standard measuring the number of ENs completed within four months (from 50.8 per cent in 2012–13 to 70.7 per cent in 2013–14—Table 4.5).

4.20 To further improve the efficiency and effectiveness of the treatment of ENs, the ATO is designing a series of procedural changes. The project, *Tailoring the Employer Experience for SG*, scheduled for implementation from July 2015, aims to apply differentiated treatments to EN cases, taking into account the employer's previous and current compliance history and their specific circumstances. For instance, an employer with a history of good compliance could receive a letter or a telephone call from the ATO, requesting them to address any potential delay in payment of SG. By contrast, an audit would be initiated promptly for an employer from a high-risk category and with a history of late or underpayment of SG. The ATO expects that this new approach will assist it to identify and act earlier and more firmly on serious non-compliance, improve the experience of employers who are willing to comply with their SG obligations, and make more efficient use of ATO resources. This project has the potential to use active compliance resources more efficiently, with positive outcomes for both employees and employers. Considering that the ATO has been receiving large volumes of ENs for a number of years, the project's proposed changes, together with the recent

measure establishing the early engagement of the employer, were long overdue.

Selecting employers for targeted compliance activities

4.21 In relation to SG, the ATO has two distinct strategies, each using a data matching model, for identifying cases for active compliance activities:

- the high-risk industry strategy, which each year involves the identification of a small group of industries at high-risk of non-compliance; a subsequent education campaign targeting these industries; and the audit of a number of employers in these industries; and
- the high-risk employer strategy, which involves the analysis of the entire employer population; the identification of those employers considered at higher risk of non-compliance; and the selection of a number of these employers for audit.

High-risk industry strategy

4.22 The high-risk industry strategy has been applied since 2008 and aims to improve voluntary compliance among employers from the selected high-risk industries. Table 4.6 lists the industries that have been targeted since the commencement of the strategy.

Table 4.6: High-risk industry strategy—targeted industries

Year ¹	Industry
2008–09	Hairdressing and beauty; building and industrial cleaning; management advice and consulting
2009–10	Road freight transport; automotive body, paint and interior repair; other automotive repairs; electrical services
2010–11	Computer system design and related information technology services; accounting services; accommodation services
2011–12	Cafes and restaurants; carpentry services; real estate services
2013–14 ¹	Hairdressing and beauty; clothing retailing; management advice and consulting
2014–15	Child care services; building and industrial cleaning; hotels, taverns and bars

Source: ATO documents.

Note 1: These years relate to the communication component of the strategy. The high-risk industry strategy was not run in 2012–13 because of the extensive marketing work associated with the promotion of the SuperReforms.

4.23 For each of the industries targeted, the communication phase alerts employers to the ATO’s emphasis on SG compliance in their industry, inviting them to check their compliance and, where relevant, address possible non-compliance. Approximately six months after the communication phase, a number of employers from the target industries are selected for audit.

4.24 The data matching model used to select high-risk industries follows a two-stage approach: the proposed industries selected for each round of implementation are submitted for endorsement to the Superannuation Risk Sub-Committee; and a detailed communication action plan is developed and submitted for executive clearance (Table 4.7).

Table 4.7: High-risk industry strategy—data matching model

<p>Communication phase</p> <p>The data matching model used to identify high-risk industries is based on the results of the audit work conducted on ENs and by the Small Business and Individual Taxpayer business line for the previous financial year and the year-to-date. Each database is analysed and a final score is obtained, reflecting, for each industry (ANZIC code), the:</p> <ul style="list-style-type: none">• number of cases resulting in a liability raised (for the 2014–15 round of the strategy, 10 734 EN cases and 3896 SB/IT cases);• amount of liabilities raised, to factor in the financial impact of non-compliance;• number of employers in each specific industry, so that the education element of the strategy is deployed to industries with sufficient employers; and• industries chosen for the strategy in previous years. <p>The 2014–15 round of the strategy selected the three industries with the highest rating. To confirm that the selected industries are at high-risk of non-compliance, the ATO analyses the SG contribution rate for each industry, based on the declared salary and wages and on the SG amounts included in the Member Contribution Statements received from the superannuation funds. The purpose of this analysis is to identify average contribution rates less than the minimum compulsory rate (nine per cent for 2013–14 data).</p> <p>Audit phase</p> <p>As part of the high-risk employer strategy, described in Table 4.8, the ATO checks a sufficient number of employers from the targeted high-risk industries are included in the cases selected for proactive audit work.</p>
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Source: ANAO analysis.

4.25 The high-risk industry strategy includes an evaluation phase, which measures the impact of the strategy by assessing the increase in the number of voluntary SG charge statements received following the education and audit period. The evaluation is used to inform future strategies, and was reviewed and approved by the ATO’s Revenue Analysis Branch.

4.26 While the development and implementation of the high-risk industry strategy provides a good basis for selecting industries, it could draw on a wider pool of non-compliance information, including from external stakeholders (as discussed in Chapter 2). Also, considering the relatively low cost of implementing the communication phase of the high-risk industry strategy (in 2014–15, the communication budget was \$40 000), and the potential for identifying non-compliance through the strategy, the ATO could consider extending the strategy to include a larger number of industries (for instance, six industries instead of just three). This would also raise awareness among employers of the ATO’s role in, and focus on, addressing non-compliance, as discussed in Chapter 3.

High-risk employer strategy

4.27 To implement the high-risk employer strategy, the ATO selects a small number of employers for pro-active audit work, using a methodology based on data matching and filtering (applied to the entire employer population) and identifying and ranking the employers at higher risk of non-compliance. To assess the reliability of the ATO’s approach for selecting high-risk employers, the ANAO reviewed the data matching model used to extract, match and filter the employer data (Table 4.8).

Table 4.8: High-risk employer strategy—data matching model

The selection of high-risk employers follows a three-step process:

Step 1: An SQL query¹ is run monthly on the ATO data warehouse² to obtain an initial employer population. As this query determines the employer population from which cases are selected, it is essential that the data extraction parameters of the query are correct. In a well-controlled environment, it is expected that formal business requirements (or technical specifications) supporting the query be documented and approved by the executive. The ATO was unable to provide these business requirements.

An examination of the extraction parameters revealed that the query excluded particular groups of employers and employees, depending on the business size and insolvency status and upper level of SG contribution received by employees. The ATO indicated that these exclusions were performed to optimise the impact of the audits conducted on the selected cases.

Continued on next page

Step 2: This step is applied upon request from the pro-active compliance teams, to provide these teams with a new batch of cases. A series of manual filtering and risk profiling actions are then applied to the employer population obtained at Step 1. The methodology compares the employees' salary and wages with estimated employer contributions, and aims to identify those employers with the largest estimated SG shortfall. The model does not use the methodology developed by RAB (paragraph 2.12) to factor in the impact of the Reportable Employee Superannuation Contributions and of wages earned outside ordinary time earnings.

A final series of processes filter out additional categories of employers and market segments. The output of this filtering is then ranked and a final list of employers is obtained. As with Step 1, there was no documentation explaining the supporting assumptions and providing executive sign-off.

Step 3: The last step ensures that employers from high-risk industries targeted by the previous year's communication campaign are among the final list of employers selected for proactive audit work. Finally, every third employer in the final list is subject to a quality assurance check using an enterprise application (see paragraph 4.29), which includes up-to-date employer and employee information (such as insolvency status, lodgement of amended payment summary and estimated employee SG contributions).

Source: ANAO analysis.

Note 1: SQL (Structured Query Language) is a special-purpose programming language for managing data in relational database management systems. The SQL can merge, sort and extract data from various database tables.

Note 2: The ATO data warehouse is a relational database management system. It is populated with data from the different ATO business systems, allowing the data to be accessed without affecting the day-to-day operation of core ATO systems. It also enables a static view of data that may not be maintained in dynamic real time processing systems.

4.28 This data matching model is relatively complex, however there was no record of the methodology being subject to independent review or quality assurance. Further, while the ATO provided some justification for excluding a large number of business categories, the ANAO assessed that these exclusions meant that 93 per cent of employing businesses and over 76 per cent of employees are not being covered by the high-risk employer strategy.

4.29 The ATO advised that it is adapting an enterprise-wide application known as the Risk Assessment and Profiling Tool (RAPT), to address SG specific business needs. This web-based application is a tool that provides risk assessment and profiling capabilities. It is developed and maintained by the Office of the Chief Knowledge Officer, and as such is subject to the ATO's established change management processes and security access control. The Superannuation business line already uses several configurations of RAPT, adapted to various other business needs. The ATO advised that this specific configuration, called Superannuation Employer Profiling Tool (SEPT), will be

used by some compliance teams as of July 2015, and that it will replace the current case selection methodology.

4.30 The roll out of SEPT is timely, as it has the potential to address the weaknesses of the current data matching process and enable the ATO to gain a higher level of confidence that the cases selected for proactive SG audit work: make optimal use of compliance resources; yield the greatest results for employees missing out on SG contributions; achieve a higher coverage of the employee and employer populations; and effectively target non-compliant employers.

Conducting proactive audits

4.31 In addition to responding to the 18 000 ENs received on average each year between 2010–11 and 2013–14, the ATO has also carried out proactive audit work. Over the same period of time, it audited, on average each year:

- 660 employers identified as high-risk of non-compliance with SG obligations (including 140 identified from third-party referrals); and
- a further 5000 employers identified as high risk of non-compliance with employer obligations more broadly, including SG.

4.32 Table 4.9 presents the breakdown of the different types of audits conducted over these four years, the amount of SG liability raised, and the proportion of audits that identified non-compliance (strike rate).

Table 4.9: Proactive SG audits completed, 2010–11 to 2013–14

Audit type	2010–11	2011–12	2012–13	2013–14	Average
Total SG audits (No.)	5585	5271	5469	6202	5632
Total SG liability (\$ million)	133	148	199	226	177
SG-only audits					
Audits completed (No.)	801	544	513	780	660
<i>(incl. third-party referrals)</i>	<i>(131)</i>	<i>(148)</i>	<i>(138)</i>	<i>(139)</i>	<i>(139)</i>
Audits with SG liability (No.)	629	342	382	487	460
Total SG liability (\$ million)	38	39	49	57	46
Average liability (\$) (per audit with a liability)	60 427	113 323	127 513	116 192	104 364
Strike rate ¹ (%)	79	63	74	62	70
Employer obligations audits (including SG)					
Audits completed (No.)	4697	4627	4859	5331	4879
Audits with SG liability (No.)	3515	3618	3935	4672	3935
Total SG liability (\$ million)	95	109	150	169	131
Average liability (\$) (per audit with a liability)	27 012	30 215	38 000	36 219	32 862
Strike rate ¹ (%)	75	78	81	88	81

Source: ANAO analysis of ATO data and documents.

Note 1: The strike rate is the proportion of proactive audits that are successful in identifying non-compliance with SG obligations and raise a SG liability.

4.33 While the audits verifying employers' compliance with SG obligations are only conducted in the Superannuation business line, the audits of employer obligations more broadly are carried out by the SB/IT business line. Since 2004, an arrangement has been in place between the two business lines, whereby SB/IT compliance officers conducting audits of employer obligations (pay as you go—PAYG) withholding tax, fringe benefits tax, foreign and non-resident withholding tax and contractor payment) also assess compliance with SG obligations.

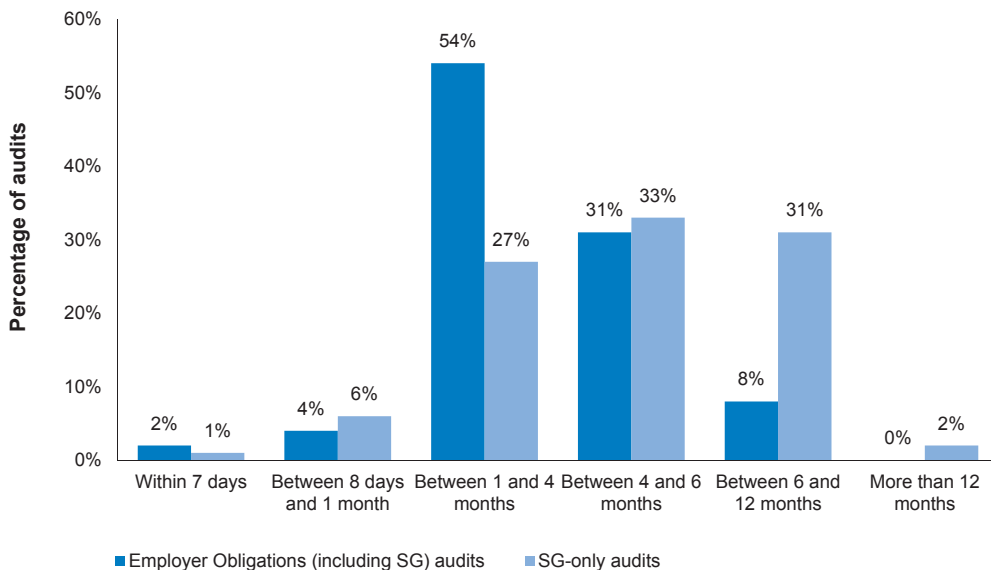
Key outcomes

4.34 The two types of proactive audits, while both checking SG compliance, presented different characteristics (Table 4.9). SG-only audits:

- were almost exclusively desk-based, unlike employer obligations audits, which were mostly field audits;
- were much fewer in number and overall raised three times less liability; and
- had a lower strike rate than employer obligations audits, although they also had a higher return per audit (approximately three times more than employer obligations audits).

4.35 Audits only addressing SG obligations also required half as many direct hours to complete (the ATO advised that in 2013–14 SG audits took on average 24 direct case hours per audit compared with approximately 48 hours for employer obligations audits), but last considerably longer. For 2010–11 to 2013–14, 60 per cent of the employer obligations (including SG) audits took four months or less to complete, while only 34 per cent of the SG-only audits were completed in this timeframe. Eight per cent of employer obligations audits took longer than six months, compared to 33 per cent for SG-only audits (Figure 4.2).

Figure 4.2: Time taken to complete proactive audit work, 2010–11 to 2013–14



Source: ANAO analysis.

Note 1: Only audits carried out by the SB/IT business line are included in the employer obligations audits.

4.36 There would be benefit in the ATO better understanding the reasons for the differences in the performance of these two types of audits, especially in relation to timeliness. In particular, while SG-only audits require less hours (which is understandable given they examine only one obligation, as opposed to audits investigating all employer obligations), the months spent dealing with tax audits impacts negatively on the employers' experience. It also affects the ATO's capacity to collect potential unpaid SG, as older debts become harder to collect (see paragraph 4.58).

Compliance collaborations between business lines

4.37 Analysis of employer obligations audits shows that employers at high-risk of non-compliance with SG obligations are often also at high-risk of non-compliance with employer obligations more broadly (in 2013–14, 88 per cent of employers at risk of being non-compliant with their other employer obligations were found to be non-compliant with SG obligations—see Table 4.9). As discussed in Chapter 2, non-compliance is also more prevalent in small and micro businesses, particularly those involved in cash transactions, sham contracting and fraudulent phoenix activities. Given these correlations, it is important that the Superannuation business line collaborates closely with other relevant ATO business lines when developing its SG compliance strategy.

4.38 In this regard, the formal arrangement between the Superannuation and SB/IT business lines has proven successful in identifying and addressing non-compliance with SG obligations.¹²⁶ Although there is no such formal arrangement, the SG Team consults with the Tax Practitioners and Lodgement Strategy business line to ensure they do not target the same employers with communication and audit activities. Additionally, the Superannuation business line is a stakeholder on a number of forums and working groups chaired by other business lines, such as the Small Business Service

126 However, the funding provided by the Superannuation business line to the SB/IT business line to conduct this audit work was reduced from over \$1 million for the 2013–14 year to \$248 000 in 2014–15. The 2014–15 agreement mentioned that consequently, it might be expected that a significantly lower number of SG obligation assessments would be conducted. The ATO indicated that this decline in funding reflected the reduction of compliance staff in response to departmental budget constraints, but that in all likelihood, the SB/IT business line would continue to verify SG obligations in comparable numbers.

Improvement Forum, the Phoenix Steering Committee and the Public Group and High Wealth Individuals Reinvention Group.

4.39 The present arrangement with SB/IT, and the Superannuation business line's participation in other business areas forums and working groups, indicate that SG compliance work is not conducted in isolation. However, there is scope to increase the level of cooperation with other relevant business lines. In particular, there would be benefit in the Superannuation business line having a closer alignment of its SG active compliance strategy with SB/IT to increase the scale of, and returns from, audits addressing SG risks. More broadly, the Superannuation business line would benefit from further leveraging off other ATO business areas. Greater collaboration with other ATO business areas would help to ensure that SG compliance issues are addressed in an effective and timely manner and across a wider range of employers.

Recommendation No.3

4.40 To improve the effectiveness of the ATO's Superannuation Guarantee compliance activities, the ANAO recommends that the Superannuation business line better aligns its Superannuation Guarantee compliance strategy with the compliance activities conducted by other relevant business lines.

Australian Taxation Office response:

4.41 *Agreed. The ATO is taking steps towards this recommendation through:*

- *The Tailoring the Employer Experience with Superannuation project which takes a whole of employer focus,*
- *The High Risk Industry strategy which uses information from all relevant business lines to assist in identifying high risk industries, and*
- *We have recently established a project of work to bring together planning and strategy development for employer obligations across tax and superannuation.*

Collecting and transferring the Superannuation Guarantee charge

4.42 The ATO's Client Account Services business line processes SG charge statements, which include statements lodged by employers and default assessments raised as a result of the ATO's compliance activities.¹²⁷ Statements lodged by employers are usually accompanied by electronic funds transfer or cheque payment. Where an assessment is incorrect, the ATO will raise an amended assessment and send a statement of account to the employer. The ANAO examined the key aspects of the ATO's collection and transfer of the SG charge.

Information technology systems processing SG charge

4.43 The ATO uses two different information technology (IT) systems to process the SG charge:

- from 1 January 2014, the SG charge notifications are processed in the Integrated Core Processing (ICP)¹²⁸ system; and
- SG charge notifications received before 31 December 2013 are processed through the Quarterly Superannuation Guarantee (QSG) system; QSG is known as a 'legacy' system and is operating in parallel with ICP until December 2016.

4.44 The ANAO assessed the reliability of the general (security and change management) and application controls supporting the processing of SG charge. In relation to the general controls, for 2013–14, no areas of deficiency were identified that were considered to have a material impact on the ATO's financial statements. The systems were found to be operating in accordance with business requirements, and no issues of significance were noted. The key systems used are subject to enterprise-level security and change management controls, which require that their core functionality is tested by the ATO to ensure accurate processing.

127 The numbers quoted in this section are for all SG charge collected, and not only SG charge collected as a result of ATO's compliance activities. The ATO's IT systems do not allow for the reliable identification of the source (EN, proactive audit, voluntary lodgement) of the SG charge collected. The numbers quoted in the previous section about ENs are collated manually by the ATO.

128 ICP is the key element of the Change Program, a major IT and business transformation change agenda initiated in 2002 to progressively replace the ATO's ageing processing systems.

4.45 With respect to data integrity, one risk identified is that errors may occur as a result of the manual entry of data. Tests conducted by the ANAO on the manual data input, edit and validation of the SG charge lodgement and calculations and of the updates to the employers' 'client account' indicated that reliable data quality controls are in place. This provides a level of assurance about the accuracy and completeness of the information manually keyed in the systems.

Source of SG charge liabilities raised

4.46 Between 2010–11 and 2013–14, around two-thirds of all SG charge liability was raised from employers voluntarily lodging an SG charge statement, without any direct ATO intervention. The balance (33 per cent) was the result of compliance work conducted by the ATO through responses to ENs and proactive audits. There was also a steady increase in the total amount of liability raised between 2010–11 and 2013–14 (from \$517 million to \$844 million as shown in Table 4.10).

Table 4.10: Source of SG charge liability, 2010–11 to 2013–14

Source of SG charge liability	2010–11		2011–12		2012–13		2013–14		Average	
	\$m	%	\$m	%	\$m	%	\$m	%	\$m	%
Voluntary SG charge statement	351	68	372	67	415	64	585	69	431	67
Proactive audit work	133	26	148	27	198	31	226	27	176	28
Response to ENs	33	6	33	6	33	5	33	4	33	5
Total¹	517	100	553	100	646	100	844	100	640	100

Source: ANAO analysis of ATO data and documents.

Note 1: Totals may not add due to rounding.

Collection of the SG charge

4.47 The ATO transfers the SG shortfall and the nominal interest amounts to the employees' superannuation funds.¹²⁹ The other components of the SG charge received (the administration cost and the penalties) are retained by

¹²⁹ In a small number of cases (for example, when the employee is retired or deceased), the ATO transfers the SG shortfall and the nominal interest directly to the individual or their beneficiaries.

the ATO. On average between 2010–11 and 2013–14, the ATO collected 52 per cent of the SG charge raised (Table 4.11).

Table 4.11: SG charge raised and collected, 2010–11 to 2013–14

SG charge	2010–11		2011–12		2012–13		2013–14		Average	
	\$m	%	\$m	%	\$m	%	\$m	%	\$m	%
Raised	517		553		646		844		640	
Collected ¹	269	52	323	58	337	52	395	47	331	52

Source: ATO, Annual Reports, 2010–11 to 2013–14.

Note 1: While the amounts raised are for SG charge statements lodged or default assessments issued that year, the amounts collected relate to that and previous years. For instance, amounts collected in 2013–14 are from liabilities raised in that and previous years (but collected in 2013–14). The same applies to amounts transferred.

Timeliness of transfer

4.48 The collected SG charge amounts (excluding penalties and administration costs) are transferred monthly to the relevant superannuation funds. The ATO advised that the monthly transfer is in accordance with ATO payment standards and limits the number of interactions with superannuation providers. Employers are charged a 10 per cent nominal interest on any SG shortfall until an SG charge payment is made to the ATO in order to compensate employees for interest foregone.

4.49 For the employee, interest is not accumulated between the time that the SG charge is received by the ATO and the time it is received by the funds. While recognising that the employee receives the 10 per cent nominal SG interest charge, there are likely to be earnings foregone from this delay. The ATO advised that the monthly transfer of payments is under review, in consultation with superannuation funds, and that any change in the frequency of transfers will be part of reforms (Super Reform 15) planned for February 2016.

SG charge returned to the ATO

4.50 When the ATO is unable to identify a superannuation fund account, or when a superannuation fund receives a SG charge amount from the ATO but cannot locate the account holder, the amounts are returned to the ATO's

Superannuation Holding Accounts Special Account.¹³⁰ Table 4.12 shows that, over the period 2010–11 to 2013–14, between \$35 million and \$81 million in SG charge amounts were returned by superannuation funds to the ATO each year. This represents between 10 and 17 per cent of the payments made by the ATO to the superannuation funds.

Table 4.12: SG charge payments made to funds and returned to the ATO, 2010–11 to 2013–14

SG charge payments	2010–11		2011–12		2012–13		2013–14		Average	
	\$m	%	\$m	%	\$m	%	\$m	%	\$m	%
Made to funds	307	100	347	100	347	100	469	100	366	100
Returned to ATO	49	16	52	15	35	10	81	17	54	15

Source: ANAO analysis of ATO data.

4.51 Reasons for the relatively high proportion of SG charge payments that are returned to the ATO include that, as discussed previously, a large proportion of employees lodging a notification have left their employers, and a large number of non-compliant employers are insolvent. By the time the missing SG is collected, employees are likely to have changed employer, and possibly superannuation fund.

Managing SG debt

4.52 Where an employer does not pay the SG charge by the due date (and does not contact the ATO), the Commissioner of Taxation can take appropriate action to recover the debt. The ATO's Debt business line has primary responsibility for managing taxation and superannuation debt, including debt arising from SG obligations. The ATO uses several categories to distinguish different types of debts. Debt on hand consists of debt that is:

- disputed—subject to an objection, review or appeal;
- insolvent—subject to insolvency proceedings; or
- collectable—neither disputed nor insolvent.

¹³⁰ The Superannuation Holding Accounts Special Account is a holding mechanism designed to protect employees' superannuation amounts until they can be transferred into a superannuation fund or retirement savings account.

Debts can move between these three categories, for example: a disputed debt may become a collectable debt when the dispute is finalised and a debt remains outstanding; and a collectable debt may become an insolvent debt when the business enters into administration or liquidation.

4.53 As at 30 June 2014, the value of SG charge debt on hand was \$1.02 billion. On average, the debt on hand has been growing at a rate of 12 per cent per annum since 2010–11 (Table 4.13). At June 2014, debt on hand consisted of \$496 million in insolvent debt (49 per cent of the total), \$460 million in collectable debt (45 per cent) and \$58 million in disputed debt (six per cent).

Table 4.13: Growth of SG debt on hand, 2010–11 to 2013–14

SG debt on hand	2010–11	2011–12	2012–13	2013–14
Total (\$ million)	732	826	932	1021
Annual growth (%)	-	13	13	10

Source: ANAO analysis, based on ATO Annual Reports 2010–11 to 2013–14.

4.54 Debt on hand can be written off in two circumstances:

- when the ATO has established that an insolvent debt will not be recoverable under law; and
- when a collectable debt is uneconomical to pursue. Debts that are not economical to pursue include those where: the employer has no assets or funds and their financial circumstances are unlikely to improve; the total cost of recovery action would exceed the amount of the debt that may be collected; or the ATO is unable to locate the employer.

4.55 The ATO can re-raise insolvency debts and debts not economical to pursue when, at a later date, the taxpayer’s circumstances have changed, although this rarely occurs for insolvency debts.

4.56 In 2013–14, the ATO wrote off \$257 million in SG debt, 91 per cent relating to SG charge debt where employers became insolvent. Between 2010–11 and 2013–14, the amount of debt written off due to employer insolvency grew from \$99 million to \$233 million, an increase of 133 per cent (Table 4.14).

Table 4.14: SG debt written off, 2010–11 to 2013–14

Debt written off	2010–11		2011–12		2012–13		2013–14		Average	
	\$m	%	\$m	%	\$m	%	\$m	%	\$m	%
Total debt written off	128	100	112	100	204	100	257	100	175	100
Not recoverable at law (insolvent)	99	78	89	79	189	93	233	91	152	87
Uneconomical to pursue	29	23	23	21	15	7	24	9	23	13

Source: ANAO analysis, based on ATO Annual Reports, 2010–11 to 2013–14.

Note 1: Totals may not add to 100 due to rounding.

4.57 In addition to insolvent debt representing the vast majority of SG debt written off each year, insolvent debt accounted for around half of the total debt on hand (paragraph 4.53). Insolvency is also the primary reason that ENs are closed without the employer being audited.¹³¹

Use of Director Penalty Notices

4.58 Under the director penalty regime, which has been in operation since 1993, company directors are personally liable for amounts withheld by their company that have not been remitted to the ATO. Since June 2012, changes to the *Tax Administration Act*¹³² extend the regime to cover SG amounts. The measure strengthens directors' obligations to arrange for their companies to meet PAYG withholding and superannuation obligations, and can be used to address two of the main factors affecting SG charge collections—late identification and compliance intervention, as discussed in Chapter 3; and employer insolvencies (in 2013–14, half the debt on hand was due to insolvencies). There is generally a considerable lag (two to three years) between when the employer fails to pay a SG contribution and when the SG charge liability is raised. This makes SG charge liabilities particularly challenging to collect.

4.59 Directors automatically become liable for a penalty equal to their company's outstanding PAYG withholding and SG charge liabilities at

131 Nineteen per cent of ENs received between 2009–10 and 2012–13 were completed as NFA because of employer insolvency—see Table 4.4.

132 *Tax Laws Amendment (2012 Measures No. 2) Act 2012*.

midnight on the due date, unless the company has been placed into voluntary administration or liquidation.¹³³ To recover the director penalty, the ATO will issue a written notice (a Director Penalty Notice—DPN) and wait until the 22nd day after issuing that notice before commencing proceedings.

4.60 In 2013–14, the ATO issued DPNs to directors of around 1400 companies with a SG liability, representing 2.8 per cent of all companies with a SG charge liability¹³⁴, and advised in May 2015 that this number included DPNs to directors of 219 insolvent companies. The ATO was unable to advise the population of insolvent companies whose directors should have been issued with a DPN but indicated that the use of DPNs to recover SG debt had been limited, primarily due to:

- system limitations—before the DPN arrangements took effect, the ATO advised the Treasury that its superannuation IT systems did not support full implementation and that an automated process would not be operational before December 2013. The automated process has been delayed twice, first to December 2015 and subsequently to March 2016; and
- staff resourcing and staff capability issues—issuing a DPN is a resource intensive function that requires particular skills and impacts on workloads across the Superannuation, Debt and Client Account Services business lines.

4.61 The ATO has internally described DPNs as ‘arguably the most significant law change to enhance employer compliance since the inception of SG’. However, as indicated by the ATO, implementation of this new measure has been limited. Its effectiveness is also difficult to evaluate at this time, given the ATO was unable to advise the population of insolvent companies with directors that should have received a DPN. While recognising that many insolvency cases are not suitable for DPNs, it is important that the ATO gains assurance from its processes that DPNs are being issued where it is appropriate to do so.

133 However, if the company liabilities remain unreported to the ATO for more than three months, the director cannot subsequently extinguish their liability by placing the company in liquidation.

134 Commission of Taxation, *Annual Report 2013–14*, p. 68.

4.62 The ATO advised that in October 2014 it commenced the phased implementation of a new debt collection strategy that uses data and analytics (based on the employer's compliance history) to enhance the effectiveness and efficiency of the ATO's approach to payment compliance. The strategy is expected to identify, for example, when a DPN would be the 'next best action' to achieve payment compliance. Under this strategy, when employers present a history of non-compliance, minimal time would be invested in 'light' or 'medium touch' engagement activities, and stronger or legal action would be promptly taken. The ATO advised in May 2015 that, while this new strategy has not yet been applied to DPN treatments (including on insolvent companies), it expects that when finalised, DPNs will be issued more promptly and in a more systematic manner, leading to an improvement in the amount of SG charge collected. It will be important for the ATO to evaluate the effectiveness of this strategy, particularly that it has been appropriately applied to the relevant population.

Conclusion

4.63 The Superannuation business line's resources have been mostly dedicated to responding to significant numbers of ENs (around 18 000 on average annually from 2010–11 to 2013–14). In addition, the business line has conducted approximately 660 audits of employers at risk of non-compliance with SG obligations, and has arranged for the SB/IT business line to verify the SG compliance of a further 5000 employers as part of their program of audit of employer obligations more broadly.

4.64 In responding to ENs, the ATO has met its timeliness standards consistently in recent years. These standards could be enhanced, however, to include the time required for ENs to be finalised (the time taken for SG charge amounts to be paid or written off by the ATO), as well as completed (the time taken for the ATO to reach a decision). Approximately half the ENs finalised were verified as presenting a compliance issue, raising approximately \$70 million between 2010–11 and 2013–14. However, the real level of non-compliance revealed by ENs is higher, as a considerable proportion of ENs (19 per cent) were finalised as NFA due to employer insolvency, which means that some SG may remain unpaid. In this light, the new ATO project *Tailoring the Employer Experience for SG*, which aims to address ENs through a differentiated treatment, has potential to increase the ATO's efficiency in responding to ENs.

4.65 The selection of appropriate proactive SG audit cases is critical to the effectiveness of the Superannuation business line's compliance activities. In this regard, the high-risk industry strategy is supported by a data matching model that is reasonably robust but could draw on a wider pool of non-compliance information, including from external stakeholders. Given the relatively low cost of the communication phase of the high-risk industry strategy, the ATO could consider increasing the number of targeted industries. The ATO could also take steps to improve the data matching model supporting the high-risk employer strategy.

4.66 The similarities in risk profiles of employers, and the differences in performance and outcomes for the two types of proactive audits (verifying SG obligations only and employer obligations more broadly), suggest that there would be benefit in the Superannuation business line better aligning its compliance strategy with the audit activities carried out by SB/IT. There is also scope to further increase the level of cooperation with other relevant business lines to support a more effective and timely treatment of SG compliance activities across a wider range of employers.

4.67 Between 2010–11 and 2013–14, the ATO collected approximately half of SG charge liabilities raised, and a significant proportion (15 per cent on average) of SG payments made to superannuation funds was returned to the ATO. The SG debt on hand reached \$1.02 billion in 2013–14, with an average annual growth of 12 per cent over the period. Insolvencies and delayed compliance interventions are important factors affecting the ATO's capacity to collect and successfully transfer unpaid SG. A greater and earlier use of DPNs, as proposed by the new debt collection strategy being implemented by the ATO, should improve the ATO's effectiveness in collecting the SG charge.

5. Quality Assurance, Review Process and Evaluation

This chapter examines the ATO's arrangements for continuous improvement, including how it: assures the quality of Superannuation Guarantee active compliance cases; responds to objections, appeals and complaints; and evaluates the performance of Superannuation Guarantee compliance strategies and activities in mitigating compliance risks.

Introduction

5.1 Assessing the quality and outcomes of SG compliance activities provides the ATO with an opportunity to identify performance issues, highlight areas for improvement, and determine whether it has been effective in addressing compliance risks. Objections, appeals and complaints also provide useful information to identify areas where strategies and activities may not be delivering desired outcomes.

5.2 To examine how the ATO uses the information gathered through assessing the quality of its SG compliance activities and evaluating their effectiveness, the ANAO examined the ATO's:

- quality assurance arrangements for SG active compliance activities;
- management of SG objections, appeals and complaints; and
- processes for evaluating the effectiveness of SG compliance strategies.

Assuring the quality of Superannuation Guarantee compliance activities

5.3 The work of compliance officers to address ENs and conduct particular proactive audits is subject to routine quality checks at key decision points. Audit cases are managed within the ATO-wide electronic case management system, which uses the IPEC model (initiate, plan, execute and close). Until early 2015 all SG audit cases were quality assured at the case plan approval, case decision and case closure points by the case approver, usually the team leader, and by site-based quality assurance officers. The ATO advised that, from early 2015, the Superannuation business line has streamlined quality checking of SG audit cases, and subsequently the work of case officers who are

considered competent does not always require quality checking at each of these points. In addition, from 1 July 2015, all SG audit cases will only be quality assured at the case decision approval point.

5.4 In addition to these case review processes, until June 2014 the ATO applied its Integrated Quality Framework (IQF)—a quality assurance framework that aimed to continuously improve and assure the consistency and correctness of administrative decisions made by staff. From 1 July 2014, the ATO replaced the IQF with ‘ATO Quality’. The new framework aims to simplify and streamline the ATO’s approach to quality measurement.¹³⁵

5.5 The ATO used the IQF to assess selected audit cases against nine measures (administrative soundness, appropriateness, consistency, correctness, effectiveness, efficiency, integrity, transparency and timeliness) and to rate the cases as either very high, high, meets standard, aligned or not aligned. The IQF benchmark was that 90 per cent of selected cases should be assessed as meeting standard or higher.

5.6 The ANAO reviewed the IQF results for Superannuation business line audits for the period 2010–11 to 2013–14.¹³⁶ A total of 424 closed audit case assessments (including SG proactive audits and EN cases) were assessed during this period. IQF reports do not systematically record or report on quality assurance outcomes for SG audit cases, separately from other superannuation cases. However, in the sample reviewed, SG audit cases were identified in around 180 instances for not meeting the benchmark for a particular IQF measure.

Outcomes of quality assurance reviews of the compliance activities conducted by the Superannuation business line

5.7 Results over the period 2010–11 to 2013–14 show that the business line almost achieved the benchmark for all but two measures (with 80 per cent or more of cases meeting the standard). Most of these measures show a marked improvement between 2010–11 and 2011–12, and have continued to remain at

135 The ANAO has not reviewed this new framework as it had not been substantially applied to SG cases at the time of audit fieldwork.

136 The ANAO examined 38 IQF reports, including seven quarterly snapshots, 27 monthly reports, one trend report and three governance reports.

a high level. The two criteria that have not followed this trend, achieving less than 80 per cent in 2013–14, were transparency and integrity.

Transparency

5.8 The Superannuation business line has consistently failed to meet the benchmark for transparency¹³⁷, with only around 50 per cent of cases being found to at least meet the standard, over the period 2010–11 to 2013–14. The key issues identified by the IQF reports were: case officers working outside the ATO's electronic case management system; insufficient record keeping, in particular, the quality of documents in the electronic case management system, such as lack of evidence and case records not being recorded in a timely manner; and system issues that resulted in letters not being issued to employees lodging an EN (see Chapter 4 paragraph 4.18).

Integrity

5.9 In 2013–14, the number of cases meeting the integrity¹³⁸ benchmark decreased by 10 percentage points, from 86 to 76 per cent. While the Superannuation business line had achieved more than 80 per cent for this measure in the preceding two financial years, IQF reports identified two main issues: lack of adherence to security procedures when communicating with clients by email, and failure to conduct proof of identity checks.

5.10 The IQF process also requires the conduct of community involvement workshops. These workshops involve the engagement of a suitably qualified representative (such as a lawyer, tax practitioner or academic) to review, as part of a panel, quality management processes, case procedures and decisions. The Superannuation business line conducted five workshops between 2010–11 and 2013–14. These workshops examined 39 closed audit cases. Overall, the workshops confirmed the findings of the IQF reviews.

ATO's actions to address identified issues

5.11 To address the issues identified through the IQF process, the ATO has undertaken a range of actions. In April 2011, the Superannuation business line assessed an additional 510 cases. This work confirmed the quality assurance

137 'Transparency' refers to decisions that are well explained, supported with reasons that are clear and accurate. It also covers the provision of information to clients on their review rights.

138 'Integrity' refers to decisions that reflect ATO's conformity to the Taxpayers' Charter principles (for example, respect of client privacy).

issues, provided additional details on the possible causes and identified corrective actions. In particular, more than 40 per cent of the 510 assessments failed the benchmark for transparency.¹³⁹ Two of the three measures examined showed an improvement in subsequent years' IQF results.

5.12 The IQF team has also conducted a number of workshops with Superannuation staff to better understand the causes of identified issues, and has implemented projects to identify best practice case management and improve the quality of case records. For example, training materials were developed to improve case note writing capability in mid-2011, and the IQF team participated in the development of the ATO-wide compliance program transparency training package that was trialled in October 2012 and subsequently rolled out to all sites. For cases requiring improvement or that have failed, IQF assessors also meet with case owners and team leaders to provide advice and guidance on correct procedures. In 2014, the IQF reports indicated that the Superannuation business line intended to conduct small group staff consultations as transparency remained an issue. The ATO advised that these consultations have not proceeded, but that transparency is a continuing theme under the new quality framework.

5.13 Many of the quality issues identified by the IQF relate to officers' use of the ATO's electronic case management system. The ANAO has reported on this continuous challenge affecting the transparency of compliance cases in several previous audit reports.¹⁴⁰ In relation to SG, the IQF has been an effective tool to detect quality issues, and as a result of its implementation, the Superannuation business line has undertaken a range of corrective actions to address these issues, leading to some improvement. However, as transparency remains an issue, the business line will need to maintain this effort.

5.14 In response to integrity issues, in 2011–12 the business line commenced an education program on the proper use of email, raised the issue at SG leader

139 Of these additional 510 cases, 28 per cent did not meet the benchmark for transparency (see paragraph 5.12), 26 per cent for timeliness and 12 per cent for correctness. The issue identified for a significant number of cases that failed these IQF measures was the quality of case documents and other records in the ATO's electronic case management system.

140 For instance, the ANAO identified that 43 per cent of audit cases of high wealth individuals required improvement or failed to meet the transparency measure due to weaknesses in the recording of activities. ANAO Audit Report No. 35 2013–14, *Managing Compliance of High Wealth Individuals*, 2013, pp. 90–2. Other audits include; ANAO Audit Report No. 5 2014–15, *Annual Compliance Arrangements with Large Taxpayers*, 2014, p. 83, and ANAO Audit Report No.16 2011–12, *The Management of Compliance in the Small to Medium Enterprises Market*, 2011, pp. 94–6.

forums and included articles in the business line's IQF newsletter. Following the re-emergence of this issue in 2013–14, the IQF team identified this and proof of identity checks as opportunities for improvement. The ATO advised that the proper use of emails is an ATO-wide issue and the subject of high level discussions. The IQF findings were also one of the catalysts for the successful 2013 pilot aimed at engaging early with employers against whom ENs had been lodged (see Chapter 4 paragraph 4.18), and to the development of a consistent approach to 'status of the worker' issues within the business line's active compliance and interpretative assistance teams.

Responding to objections, appeals and complaints

Objections and appeals

5.15 If employers want to correct a mistake or omission on an SG charge statement, they can request an amendment to the statement within four years of the date it was made. They must provide supporting documentation with their amendment request. If employers want to dispute the law or the facts the ATO used to come to the decision, they can also object to an SG charge statement default assessment, within 60 days of the statement being issued.

5.16 Amendments and objections are part of the ATO's internal review process and are conducted by the Interpretative Assistance team, within the Superannuation business line. If the objections are not allowed in full, employers may apply, within 60 days of the decision to the objection being issued, for an appeal to the Administrative Appeals Tribunal (AAT), or to the Federal Court or High Court.

5.17 Employees are not able to object to an SG charge assessment. They can, however, make a complaint to the ATO, the Commonwealth Ombudsman, the relevant Minister and/or their Member of Parliament. These avenues are also available to employers.

Outcomes of SG amendments, objections, appeals and complaints

5.18 Between 2010–11 and 2013–14, the ATO has closed 5694 amendments and objections (1400 on average each year), and 108 appeals to the AAT, the Federal Court or High Court. Over the four year period, the number of amendments has decreased, while the number of objections has grown almost proportionally (Table 5.1).

Table 5.1: SG amendments, objection and appeal cases closed, 2010–11 to 2013–14

No.	2010–11	2011–12	2012–13	2013–14	Total
Amendments	532	599	358	165	1654
Objections	556	1014	1164	1306	4040
Total amendment and objection cases	1088	1613	1522	1471	5694
Appeals to the AAT	10	12	23	53	98
Appeals to the Federal Court or High Court	4	3	3	0	10
Total appeal cases	14	15	26	53	108

Source: ANAO analysis.

5.19 As a result of the amendment and objection process, 70 per cent of cases where a decision was reached were allowed in part or in full (Table 5.2).

Table 5.2: Outcomes of completed SG amendments and objections, 2010–11 to 2013–14

Outcome	No.	Percentage of completed cases	Percentage of decided cases
Allowed in full	775	14	24
Allowed in part	1469	26	46
Disallowed	936	16	29
Total decided	3180	56	100
Invalid ¹	1345	24	
Withdrawn ²	672	12	
Other ³	497	9	
Total completed	5694	100	

Source: ANAO analysis. Percentage may not add to 100 due to rounding.

Note 1. 'Invalid' includes requests that were not in the approved form, and/or did not state in full the grounds for the objection, and/or were not lodged on time.

Note 2. 'Withdrawn' includes requests where the employer was not able to supply sufficient evidence on time.

Note 3. 'Other' includes amendments and objections for which the outcome was not recorded.

5.20 The ATO records the reason for decision, which is provided to employers when the cases are either disallowed or allowed in part. The reasons for decisions are also analysed by the Superannuation business line with a view to enable team leaders to identify learnings at the individual or team

level where an SG audit decision has been allowed in part or in full, and to identify potential business improvement opportunities. The ATO further advised that many employers provide new information at amendment or objection stage, which is the main reason that the initial SG charge assessment is changed and cases are allowed in part or in full.

5.21 Approximately half (46) of the appeals of SG decisions to the AAT and the High Court and Federal Court were settled. This reflects the ATO's policy to encourage negotiation of settlements to minimise the time and resources involved in disputes.¹⁴¹ Of the remaining cases, 44 were either withdrawn or dismissed. Fourteen were decided in part or in full against the employer and four against the ATO.

Timeliness

5.22 The ATO service standard for amendments and objections is to provide a decision within 56 calendar days of receiving all necessary information. Cases that have been assessed as complex can have the due date negotiated by contacting the taxpayer. The ATO benchmark for 2013–14 was 70 per cent of cases finalised within the service standard. Between 2010–11 and 2013–14, the Superannuation business line exceeded the benchmark with 89 per cent of SG amendments and objections decided within 56 days. Fifty-eight per cent of cases were closed within 31 days.

Complaints and other forms of feedback

5.23 The ATO has a complaints management system to receive and process complaints from individuals or their representatives. Complaints may be made by calling the complaints telephone hotline, online through complaints and feedback forms, or by writing to the ATO.

5.24 The ANAO examined the complaints received between 1 January 2012 and 31 October 2014. During this period, the Superannuation business line received 553 complaints related to SG matters. This number is relatively low: it represents less than one per cent of the 30 000 complaints the ATO has received each year over this period. Detailed analysis of the complaints was

141 ATO, *Code of Settlement Practice*, and ATO, Practice Statement PS LA 2013/3, *Alternative Dispute Resolution in ATO Disputes*, 20 August 2013, both available from <https://www.ato.gov.au/General/Correct-a-mistake-or-dispute-a-decision/In-detail/Avoiding-and-resolving-disputes/Settlement/Code-of-settlement/> [accessed 9 January 2015].

difficult because the ATO does not record whether the complainant was an employer or an employee; and does not always clearly identify the nature of the complaints. For the complaints where complete information was available (297), the ANAO identified that the key issues raised by the complainants related to:

- the EN process—such as, lodgement, timeliness of ATO response, information on progress, and dissatisfaction with the outcome (for example, where an employer was insolvent);
- administrative and other issues—such as, difficulties in contacting the ATO or accessing the ATO website, and incorrect lodgement of a complaint instead of an EN;
- SG payments—such as, delays in transfer or error in identification of the superannuation fund; and
- SG charge—such as, difficulties in understanding the legislation and the charge calculation, and disagreement with the amount of SG charge payable.

5.25 The ATO service standard is to resolve complaints within 15 business days. The ATO achieved the benchmark of 85 per cent of SG complaints finalised within the service standard.

5.26 Individuals may also contact their local Member of Parliament where they have a complaint. Between 1 January 2012 and 31 October 2014 the Superannuation business line received 468 contacts from Members of Parliament on SG matters. The majority of the queries were in relation to unpaid SG and collection of the SG debt.

ATO analysis of complaint information

5.27 Superannuation complaints are analysed by the Interpretative Advice team within the Superannuation business line, which reports to specific business areas (including SG) on the volume of complaints received. Specific SG issues are brought to the attention of SG Team on a case by case basis. The ATO advised that trends are analysed to identify risks and issues and possible improvements.

Complaints to the Commonwealth Ombudsman

5.28 Superannuation was the fourth most common theme of complaints received by the Ombudsman about the ATO between 2011–12 and 2013–14, representing some 10 per cent of ATO complaints.

5.29 Most complaints made about superannuation related to unpaid SG contributions (the other common theme was regulatory issues for self-managed superannuation funds), and were consistent with those identified by the ANAO in complaints received by the ATO. Complaints to the Ombudsman are typically made by individuals concerned about delay, lack of information or uncertainty about the ATO's progress towards collecting unpaid superannuation; and small business employers disagreeing with audit actions. The Ombudsman noted the ATO generally followed due process in investigating superannuation inquiries and had improved the clarity of the letters sent to employees to inform them of the progress of their EN.

Evaluating the compliance strategy

5.30 Since 2008, the ATO has used a compliance effectiveness methodology (CEM) to measure the impact of its compliance strategies in treating specific compliance risks.¹⁴² The methodology is seen by the ATO as an important tool to demonstrate that it is achieving its strategic intent and providing value for money for the Government and the community.¹⁴³ The ATO has applied the CEM to evaluate the effectiveness of the SG compliance strategy at regular intervals (every year between 2010–11 and 2013–14), with the last evaluation conducted in August 2014.

5.31 The CEM comprises four phases: identifying risks; developing success goals; developing indicators; and determining effectiveness. Table 5.3 presents Phases 1 and 2 of the 2014 CEM analysis.

142 In 2014, the ANAO conducted a performance audit of the ATO's compliance effectiveness methodology. ANAO, Audit Report No.39 2013–14, *Compliance Effectiveness Methodology*, 2014.

143 ATO, *Measuring Compliance Effectiveness, Applying our Methodology*, August 2008. Available from <<https://www.ato.gov.au/Print-publications/Measuring-compliance-effectiveness---Applying-our-methodology/>> [accessed 2 December 2014].

Table 5.3: 2014 CEM evaluation of SG compliance risks: Phases 1 and 2

Compliance Effectiveness Methodology	
Phase 1—Identifying risks	
Strategic intent	Our aim is to have employers engage and comply with their SG obligations. This will contribute to the integrity of the retirement income system and build community confidence.
Compliance risks	Failure of employers to willingly participate and engage in the superannuation system by complying with their SG obligations resulting in lower retirement savings and loss of community confidence.
	The complexity of SG legislation leads to lower levels of compliance as stakeholders may not understand or be aware of their obligations and entitlements.
	Employers actively seek to avoid their SG obligations and our failure to identify non-compliance because of a lack of transaction data leads to reduced employer compliance and an undermining of community confidence.
Phase 2—Developing success goals	
Desired outcome	Employees receive their correct SG entitlements through employers' willing participation in the superannuation system and increased community confidence in the ATO's administration of SG.
Success goals	<ol style="list-style-type: none"> 1. Employers understand and meet their SG obligations. 2. Employees understand and are active in ensuring their employers meet their SG obligations. 3. The ATO supports the community by making it easier to comply and harder not to.

Source: ATO documents.

5.32 The strategic intent and the risks identified were well aligned with the program objectives as outlined in the PBS and the annual report. Further, the success goals were comprehensive and relevant, as they focused on employer compliance, employee engagement and ATO activities to foster willing compliance and address non-compliance.

5.33 To complete Phase 3 of the CEM (developing indicators), the ATO identified 17 unique indicators against the three success goals (Appendix 3). Most of the indicators were the same as the deliverables reported in the PBS. The ANAO assessed the appropriateness of the indicators developed to assess the SG compliance strategy's effectiveness against three criteria:¹⁴⁴

144 ANAO, *Better Practice Guide: Public Sector Governance*, June 2014, p. 34.

- relevant—indicators contribute to conclusions that assist users’ decision making;
- reliable—indicators allow for reasonably consistent assessment of a program; and
- complete—a set of indicators that allow for the overall assessment of a program to inform users’ decision making.

5.34 Important shortcomings were identified across each of the three criteria:

- many indicators were not directly relevant to assessing the success goals;
- the indicators were mostly quantitative and measurable, which allowed for consistent assessment of the program over the years. However, only three of the 17 unique indicators provided a target. Without an indication of the desired level of achievement (a target), or an expected timeframe, it was difficult to form a judgement on the level of success of the indicators; and
- some important indicators were missing which meant that the overall assessment of the SG program and informed decision-making were difficult.

5.35 Overall, the indicators used for the CEM evaluation of SG were not sufficiently relevant, reliable and complete to allow the ATO to assess the effectiveness of ATO’s activities in achieving the desired SG outcome.¹⁴⁵

5.36 The final step to the implementation of the CEM was the evaluation of the extent to which each success goal had been achieved (determining effectiveness). While there was no such specific evaluation in the 2014 CEM report, an ‘overall picture of effectiveness’ was provided. However, rather than providing an overall assessment of effectiveness, this conclusion described some of the challenges that were still to be addressed (a list of proposed future activities was also included). The indicators were not used extensively to support a conclusion, and the 2014 CEM did not, ultimately, succeed in assessing the effectiveness of SG compliance strategies in addressing compliance risks.

¹⁴⁵ As discussed previously, the SG outcome is that employees receive their correct SG entitlements through employers’ willing participation in the superannuation system and increased community confidence in the ATO’s administration of SG.

Recommendation No.4

5.37 To enable a reliable assessment of the effectiveness of compliance strategies to address the risks of non-compliance with Superannuation Guarantee obligations, the ANAO recommends that in future Compliance Effectiveness Methodology evaluations, the ATO:

- (a) develops indicators, targets and timeframes to assess if success goals are being achieved; and
- (b) concludes whether strategies are effectively addressing Superannuation Guarantee compliance risks.

Australian Taxation Office response:

5.38 *Agreed. We will look to review and enhance our performance measurement framework. Using the information and insight we will gather through our tailoring the employer experience and also our measurement of the SG gap, we will review and implement, where appropriate, a suite of indicators with relevant targets and timeframes.*

5.39 *These measures will aid our assessment of effectiveness in addressing Superannuation Guarantee risks.*

5.40 In January 2015, following ANAO's preliminary analysis of the 2014 CEM, the ATO commenced a new evaluation, and conducted a two-day workshop during which Phases 1 and 2 of the methodology were completed, identifying identical risks and success goals to the CEM 2014. Phase 3 was initiated, and five new potential indicators were proposed to replace the 17 previous indicators. The need for further work was also identified to develop other indicators that would better support the measure of ATO's effectiveness.

Conclusion

5.41 The IQF has been an effective tool in detecting a range of technical and staff capability issues and improving the quality of SG active compliance decisions across most quality measures. While the business line has not achieved the quality benchmark for transparency and integrity, the ATO advised that the issues underpinning these two measures are persistent across all business lines and continue to be a focus under the new quality framework introduced in July 2014.

5.42 On average, the ATO has completed over 1400 amendments and objections relating to SG charge each year between 2010–11 and 2013–14, and in doing so has achieved its timeliness standards of 56 days to completion in 89 per cent of cases, exceeding its benchmark of 70 per cent. Around two in three of these amendments and decisions were allowed in part or in full. The Superannuation business line reviews the reasons for decision to identify opportunities for improvement at the individual and team level. A small number of appeals (108) were lodged with the AAT, the High Court and Federal Court during the same period. Few complaints (less than one per cent of all complaints made to the ATO) were made in relation to superannuation guarantee. By contrast, superannuation complaints (relating primarily to unpaid SG contributions) represented 10 per cent of all complaints about the ATO received by the Ombudsman.

5.43 In relation to compliance effectiveness, the main approach used by the ATO to evaluate the SG compliance strategy, the CEM, has been applied at regular intervals. However, the performance indicators used in the 2014 evaluation were neither reliable nor complete, and the absence of a clear conclusion reduced the usefulness of that evaluation to improve the SG compliance strategy and better address compliance risks.



Ian McPhee

Canberra ACT

3 June 2015

Appendices

Appendix 1: Australian Taxation Office Response



Second Commissioner of Taxation

25 May 2015

Ms Barbara Cass
Group Executive Director
Performance Audit Services Group
Australian National Audit Office
GPO Box 707
CANBERRA ACT 2601

Dear Ms Cass

AUSTRALIAN NATIONAL AUDIT OFFICE PERFORMANCE AUDIT OF PROMOTING COMPLIANCE WITH SUPERANNUATION GUARANTEE OBLIGATIONS

Thank you for your letter dated 27 April 2015 and for the opportunity to provide comments on the proposed report on Promoting Compliance with Superannuation Guarantee Obligations.

The ATO agrees with the four recommendations as presented in the section 19 report.

Attached is the ATO response to recommendations (Annexure 1) and summary of our comments to be included in the report (Annexure 2).

I would like to thank the Australian National Audit Office audit team for the cooperative and professional manner they have adopted in working with us on this matter. I look forward to continuing the good working relationship developed in this performance audit.

If you require further information on this matter, please contact Geri Panfilo, Director, SG Product Management on (08) 7422 2233.

Yours sincerely

A handwritten signature in black ink, appearing to read "G. Panfilo".

Second Commissioner
Australian Taxation Office

Appendix 2: Employee Superannuation Guarantee Calculator tool—Types of Salary and Wages Payments

Salary and wages – Types of payment

1. Base salary or wages;
2. Overtime;
3. Commission;
4. Director's fees;
5. Salary or wages paid to you as a former employee;
6. Payments to you as a contractor where the contract is mainly for your labour;
7. Payments for domestic or private work (not as part of a business) 30 hours or less per week;
8. Payments for performance in, or provision of services relating to entertainment, sport promotions, films, discs, tapes, TV or radio;
9. Workers compensation payments (including top-up payments) paid by your employer for work performed;
10. Workers compensation payments (include top-up payments) where no work is performed;
11. Pay for sick leave taken;
12. Pay for annual holiday leave taken;
13. Annual leave loading;
14. Pay for long service leave taken;
15. Parental leave payments (includes maternity, paternity and adoption leave);
16. Casual loading;
17. Shift loading;
18. Reimbursement of expenses (e.g. travel costs);
19. Allowances (other than a reimbursement of expenses);
20. Over-award payments;
21. Payments when on jury duty, defence forces reserves leave or emergency services leave;
22. Bonuses;
23. Christmas bonuses;
24. Accrued annual leave, long service leave and sick leave paid as a lump sum on termination of your employment;
25. Payments in lieu of notice;
26. Redundancy payments;
27. Other payments made by an employer on termination of your employment;
28. Government (wage) subsidies (e.g. Wage Subsidy Scheme Allowance);
29. Benefits subject to fringe benefits tax;
30. Dividends;
31. Partnership and trust distributions; and
32. Payments for entering into restraint of trade agreement.

Source: ATO website, Employee SG calculator tool, available from <<https://www.ato.gov.au/Calculators-and-tools/Super-guarantee-contributions/>> [accessed 9 December 2014].

Appendix 3: 2014 Compliance Effectiveness Methodology Evaluation of Superannuation Guarantee Compliance Risks: Phases 3 and 4

SG Compliance Effectiveness Methodology analysis		
Success goals	Phase 3—Developing indicators	Phase 4—Determining effectiveness
1. Employers understand and meet their SG obligations	Trend in adjusted employer contributions as a proportion of adjusted salary and wages	Total employer contributions are above the nine per cent base rate for SG contributions
	Value of SG debt on hand and the amount of SG Debt irrecoverable at law or uneconomical to pursue	\$932.1m SG debt on hand; \$203.8m SG debt written off
	Value of SG entitlements distributed to individuals or superannuation funds	\$311.8m
	Value of SG charge raised (including penalties and interest)	\$646.4m
	Value of SG charge raised from risk based work (including penalties and interest)	\$207m
	Value of SG charge raised from employee complaints (including penalties and interest)	\$331m
	Value of SG charge raised from voluntary lodgements (including penalties and interest)	\$108.4m
	Value of SG charge collected	\$337.4m
	Trend in uptake rate of employer support tools and self-help services	[Information missing]
2. Employees understand and are active in ensuring their employers meet their SG obligations	Proportion of employers for whom SG liabilities were raised by the ATO	[Information missing]
	Number of SG complaints leading to a superannuation liability being raised and those leading to a no result	11 413 complaints leading to a liability raised; 5563 leading to no liabilities
	Trend in the uptake rate of employee support tools and self-help services (excluding ENS)	Increase in web hits on pages related to SG entitlements

SG Compliance Effectiveness Methodology analysis		
Success goals	Phase 3—Developing indicators	Phase 4—Determining effectiveness
3. The ATO supports the community by making it easier to comply and harder not to	Proportion of employers for whom SG liabilities were raised by the ATO	[Information missing]
	Number of employees who have had SG entitlements raised as a result of ATO compliance activities and voluntary disclosures	154 644 employees had SG entitlements raised through compliance activities and 360 922 through voluntary disclosures
	Number of employers whose records are checked	18 102 records checked
	Value of SG debt on hand and the amount of SG debt irrecoverable at law or uneconomical to pursue	\$932.1m SG debt on hand; \$203.8m SG debt written off
	Percentage of SG employee notifications commenced within 28 days of receipt compared to benchmark	99.2 per cent
	Percentage of SG employee notifications finalised by review or audit within four months of commencement compared to benchmark	50.8 per cent
	Percentage of SG employee notifications finalised by review or audit within 12 months of commencement compared to benchmark	99.7 per cent
	Trend in the uptake rate of employee support tools and self-help services (excluding ENs)	Increase in web hits on pages related to SG entitlements
	Trend in the uptake rate of employer support tools and self-help services	[Information missing]

Source: ATO documents.

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