

Super Scandal

Unpaid Super Guarantee in 2016-17



About Industry Super Australia

Industry Super Australia (ISA) manages collective projects on behalf of Industry SuperFunds with the objective of maximising the retirement savings of five million industry super members. These projects include research, policy development, government relations and advocacy as well as the well-known Industry SuperFunds Joint Marketing Campaign.

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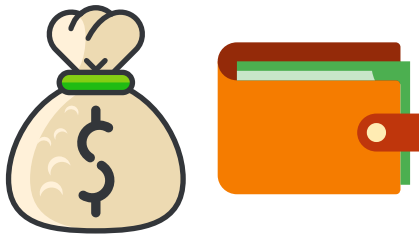
SUPER SCANDAL

New analysis of ATO data has found the unpaid super gap is getting worse, with the number of workers shortchanged increasing by 90,000 more employees in just three years.

1

\$2070

is the average underpayment -equivalent of \$80 per fortnightly pay.



2

The gap has grown.

The savings gap between those Australians robbed of their super by rogue employers and those workers paid correctly has blown out by 25 per cent in just three years.



3

Over 370,000

workers who **contribute to their super through salary sacrifices** have lost over \$1.5 billion due to employers counting this as a super contribution.



4

\$5.94 Billion

is the total amount being ripped off in super entitlements from Australian workers.



5

2.85 million Australians

are being short-changed **on their super.**



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1. Key Points

New Industry Super analysis of Australian Taxation Office (ATO) data on individuals has found the unpaid super crisis did not improve in 2016-17, with 2.85 million Australians being short-changed \$5.94 billion in super entitlements.

Disturbingly, the latest analysis reveals the damage it is wreaking on Australians super balances over time.

In 2016-17 there was on average, a 50 percent difference in the super balance of a person underpaid compared to a person of similar age and income who received their correct super entitlements. Across most age and income cohorts the difference adds up to tens of thousands of dollars less in their super nest eggs.

The report also shows that around 80 per cent of those underpaid receive a partial payment (making it harder for the ATO to detect and go after those employers doing the wrong thing). In just three years since the initial release of 2013-14 ATO file:

- The number of workers short-changed super has climbed by 90,000 (up from 2.76 million) and now affects 31.3 per cent of workers
- The amount of unpaid employer super contributions has climbed by \$340 million per year (up from \$5.6 billion)
- The average gap in savings has blown out to \$24,506, up from \$19,709 – an increase of 25 per cent.

ISA first published estimates of unpaid super in December 2016, yet there has been too little action by Government, despite the establishment of a Commonwealth Cross Agency Working Group. Since 2015-16:

- The amount of employer super contributions under paid has climbed by \$40.5 million; and
- The average amount underpaid has gone from \$1994 to \$2070; however
- The estimated number of employees underpaid has dropped by 130,000 (4 per cent)
- For almost one in three workers eligible for the super guarantee, the average underpayment stood at \$2,070 or the equivalent of \$80 per fortnightly pay.

This report also exposes a concerning trend where due to the failure to close a legal loophole, some employers are continuing to short-change employees who contribute to their super through salary sacrifice, by 'counting' that as the employer super guarantee contribution.

This has seen 370,000 workers who believe they are doing the right thing and contributing to their own super, miss out on a total of \$1.5 billion in super guarantee contributions from their employer.

ISA's detailed analysis also identifies those most at risk, with the report finding that rogue employers are exploiting younger workers, those in part-time and casual work and blue-collar jobs, including:

- Workers under the age of 30 are a third more likely to miss out on their employer's super contribution
- Over 43 per cent of labourers, machinery operators and drivers have collectively missed out on more than \$800 million making it to their super accounts

- 75 percent of Australians affected are under 35, earn under \$30,000 per annum or are in blue collar jobs.

The number one policy to fix unpaid super is to require employers to pay super at the same time as wages and salary, rather than allow the money to be used for other purposes for up to four months.

Most employers do the right thing but the time has come to make regular payment of super mandatory, and for the ATO to have a real-time view of the super guarantee base and of payments made.

2. Background

The Superannuation Guarantee was introduced in 1992 at three per cent in lieu of a wage increase and as a means of boosting retirement savings. It is now considered a matter of right.

Today, employers are required to contribute at least 9.5 per cent (up from 9.25 per cent in 2014) to the superannuation accounts of every worker earning over \$450 a month.

In 2016, a joint research project by Industry Super Australia (ISA) and the industry super fund Cbus found that some employers were undermining the system by not meeting their payment obligations, with millions of Australian workers missing out on their lawful super guarantee entitlements at work.

The research involved a review of ABS and ATO data. It concluded that around 2.4 million or almost one third of Australian workers eligible for super were missing out on compulsory superannuation payments to the tune of \$3.6 billion in 2013-2014. This equated to \$1,489 or almost four months of super for the average worker affected.

The joint ISA/Cbus research led to an Inquiry by the Senate Economics Committee of the Australian Parliament. The Committee held public hearings during late 2016 and in its final report issued in May 2017, it concluded that:

The negative impacts of non-payment of the super guarantee are pervasive. Evidence clearly indicates that a failure to adequately detect and address super guarantee non-compliance causes long-term financial detriment to millions of Australian employees, significant competitive disadvantage to compliant employers, and an unnecessary impost to government finances through additional reliance on the age pension.

The committee is particularly concerned that the individuals most at risk of the negative impacts of super guarantee non-payment often come from the most vulnerable groups in Australian society.

super guarantee forms a vital component of an employee's remuneration (and) should be categorised as deferred wages that rightfully belong to an employee. While the non-payment of super guarantee is immediately reflected in reduced superannuation balances, in the long term it also robs an employee of the benefits of investment earnings and compound interest. This is unacceptable.¹

¹ APH 2017, Superannuation guarantee overview and list of recommendations, URL: https://www.aph.gov.au/parliamentary_business/committees/senate/economics/superannuationguarantee/Report/b01

The Committee went on to make 32 recommendations for change. Only some of these recommendations have been legislated while the problem has deteriorated, and the cumulative damage to the superannuation of over 30 per cent of employees mounts.²

3. About the Research

This analysis of underpaid superannuation is based on the 2016-17 ATO 2 per cent anonymous sample file of personal tax and superannuation records.

The ISA methodology for estimating underpaid superannuation is that described in *Appendix A*.

The analysis corresponds to the current version of Section 23 of *Super Guarantee Administration Act 1992* in defining the super guarantee eligible population and in looking at the level of employer contributions irrespective of whether the contribution contains employees own salary sacrifice contributions. Although the super guarantee was 9.5 per cent of ordinary time earnings in 2015-16, the analysis adopts a conservative approach and uses an underpayment cut-off of 8.75 per cent.

The importance of the ISA analysis of super guarantee underpayment is that it looks at the detailed ATO data on individuals – something which the ATO has not done historically. To date the ATO analysis of the super guarantee gap uses aggregate billions in contributions, including contributions from those paid at higher than the super guarantee rate. The ATO analysis cannot estimate the impact on individuals or examine the characteristics of those most at risk. The ATO has committed to use new Single Touch Payroll reporting to undertake individual assessment going forward.

4. Summary Findings

The following tables highlight the categories of people who have a significantly greater risk of underpayment than the general super guarantee population's risk of 31.3 per cent. The young, those on low incomes and those in blue collar jobs have a much greater chance of super guarantee underpayment.

Table 1 shows the changes in estimates over a three year period, between 2013-14, 2015-16 and 2016-17 ATO sample files.

² APH 2017, Superannuation guarantee overview and list of recommendations, URL: https://www.aph.gov.au/parliamentary_business/committees/senate/economics/superannuationguarantee/Report/b01

⁵ Super Scandal: Unpaid Super Guarantee in 2016-17

Table 1 – Estimated Underpayment of Employer Superannuation 2013-14, 2015-16 and 2016-17

Parameter	ISA Estimates for 2013-14	ISA Estimates for 2015-16	ISA Estimates for 2016-17
Number of super guarantee Eligible Employees Under paid	2.76 million	2.98 million	2.85 million
super guarantee eligible population	8.6 million	8.9 million	9.1 million
Proportion of super guarantee Eligible employees underpaid	32%	33.4%	31.3%
Total Amount of Employer contributions underpaid	\$5.6 billion	\$5.9 billion	\$5.9 billion
Average underpayment per year	\$2,025	\$1,994	\$2,070

Source: ISA estimates using the ATO 2% Sample file for 2013-14, 2015-16, 2016-17

Table 2 shows that the estimated number of super guarantee eligible workers paid no employer contributions has been around 600,000 across the three sample files analysed. This is around 20 per cent of the super guarantee eligible but it has been a major focus of the ATO because it is easy to detect. Table 2 shows that the biggest group of workers underpaid super guarantee are those receiving between 6 per cent and 8.5 per cent of ordinary time earnings (OTE). Employers can avoid ATO scrutiny by making partial payments because the ATO currently cannot observe OTE – the data is not collected.

Table 2 – Ratio of Employer Superannuation Underpayment to Ordinary Time Earnings

Income Year of Sample	Employer contributions as percentage of imputed ordinary time earnings				
	Nil	Over 0% and up to 6%	6% up to 8.5%	8.5% up to 8.75%	TOTAL underpaid super guarantee
2016-17 Number of super guarantee Eligible Employees	604,400	694,850	1,301,900	248,750	2,849,900
2015-16 Number of super guarantee Eligible Employees	597,100	707,850	1,371,650	302,150	2,978,750
2013-14 Number of super guarantee Eligible Employees	610,850	757,200	1,392,950	Not Counted as under (300,100)	2,761,000

Source: ISA estimates using the ATO 2% Sample file for 2013-14, 2015-16, 2016-17

One of the most important findings from the 2016-17 data is that the cumulative damage to average balances from super guarantee underpayment is increasing. This is partially due to the decrease in people near our conservative employer contribution underpayment cut-off of 8.75 per cent of OTE which decreased by 53,400 between 2015-16 and 2016-17. Those remaining have a higher employer contribution gap. Table 3 shows that between 2015-16 and 2016-17 the balance in difference between those underpaid in each respective year and those not underpaid increased by 16 per cent.

Table 3 – Growing Balance Differences by Age – 2013-14 and 2015-16 to 2016-17

Age of super guarantee Eligible Person	Balance 2016-17 \$ Difference	Balance 2015-16 \$ Difference	Balance 2013-14 \$ Difference	2015-16 to 2016-17 % Change in \$ Difference	2013-14 to 2016-17 % Change in \$ Difference
20 to 24	\$3,200	\$2,665	\$2,876	20.1%	11.3%
25 to 29	\$6,956	\$5,798	\$6,560	20.0%	6.0%
30 to 34	\$11,398	\$10,136	\$11,046	12.5%	3.2%
35 to 39	\$19,481	\$15,513	\$15,274	25.6%	27.5%
40 to 44	\$24,317	\$21,852	\$20,281	11.3%	19.9%
45 to 49	\$28,695	\$26,337	\$22,484	9.0%	27.6%
50 to 54	\$32,846	\$26,837	\$25,551	22.4%	28.6%
55 to 59	\$32,093	\$24,632	\$35,472	30.3%	-9.5%
60 to 64	\$41,184	\$34,059	\$23,857	20.9%	72.6%
All	\$24,506	\$21,117	\$19,709	16.0%	24.3%

Source: ISA estimates using the ATO 2% Sample file for 2013-14, 2015-16, 2016-17

The underpayment marker is for one year, but it is a highly accurate indicator of balance differences much larger than a single year's contribution. After age 50 the balance differences between the underpaid and the correctly paid exceed \$30,000 per annum. The risk of super guarantee underpayment is concentrated on certain blue-collar occupations (see Section 4) and if underpayment persists, this is associated with a career of low accumulation.

Between 2013-14 to 2016-17, the overall average balance difference has grown by 24.3 per cent and for 60 to 64 year olds has grown by 72.6 per cent.

The next section gives a compare-the-pair type analysis of super guarantee underpayment and lower balances., illustrating the difference between people of the same age and the same income.

The Effect of Underpayment on Balances for People of the Same Age and Wage

The Tax Office data reveals that people underpaid super guarantee have significantly lower balances than people who were not underpaid. This suggests that super guarantee underpayment occurs over several years and leads to cumulative disadvantage.

The cumulative damage of super guarantee underpayment arises because of the weak enforcement action by the ATO on employer compliance – a combination of failing to fine employers who do the wrong thing, and inadequate information systems which don't measure the super guarantee base of ordinary time earnings.

Table 4 shows that in all 54 combinations of age and salary those with a super guarantee underpayment in 2016-17 had an overall balance difference from those not underpaid in that year.

In 2016-17 the average balance difference was of \$24,506 up from \$19,709 in 2013-14.

Workers aged 60-64 had an average balance difference of \$41,1849 – up from \$23,857 in 2013-14. The balance difference between the underpaid and those not estimated to be underpaid has risen significantly, consistent with underpayment of super guarantee becoming more concentrated in at risk groups

Table 4 - Dollar Differences in Balances Between those Underpaid and not Underpaid in 2016-17 by Age and Salary

Dollar differences in balances between those underpaid and not underpaid in 2015-16 by age and salary							
<i>2016-17 Salary and Wage as Recorded by the ATO</i>							
Age of super guarantee Eligible Person	\$5,401 up to \$24,999	\$25,000 up to \$49,999	\$50,000 up to \$74,999	\$75,000 up to \$99,999	\$100,000 up to \$149,999	\$150,000 and over	All
20 to 24	\$2,276	\$2,405	\$2,683	\$4,806	\$10,906	\$12,647	\$3,200
25 to 29	\$2,744	\$3,864	\$3,844	\$5,856	\$6,348	\$27,602	\$6,956
30 to 34	\$2,580	\$4,704	\$5,051	\$9,198	\$8,709	\$25,991	\$11,398
35 to 39	\$7,435	\$4,886	\$10,983	\$15,383	\$16,444	\$28,764	\$19,481
40 to 44	\$6,242	\$10,431	\$11,862	\$18,405	\$17,260	\$44,887	\$24,317
45 to 49	\$8,088	\$13,626	\$14,638	\$32,956	\$37,073	\$53,220	\$28,695
50 to 54	\$16,452	\$10,342	\$14,732	\$45,978	\$61,069	\$46,125	\$32,846
55 to 59	\$29,682	\$18,705	\$16,244	\$53,982	\$30,983	\$53,521	\$32,093
60 to 64	\$46,757	\$6,967	\$32,738	\$23,249	\$76,191	\$279,048	\$41,184
All	\$11,664	\$11,616	\$11,463	\$19,882	\$28,926	\$66,537	\$24,506

Source: ISA estimates using the ATO 2% Sample file for 2016-17

Note: Table is for those not making voluntary contributions in 2016-17

Table 5 shows that the overall percentage balance difference was 48 per cent when comparing workers paid their super guarantee entitlements and those who were not.

Young workers who are building their balances are particularly impacted. For low income earners aged under 25 those not underpaid have 81 percent more super than those not paid their entitlements.

Table 5 - Percentage Difference in Balances Between those Underpaid and not underpaid in 2016-17 by Age and Salary

Percentage difference in balances between those underpaid and not underpaid in 2015-16 by age and salary							
<i>2016-17 Salary and Wage as Recorded by the ATO</i>							
Age of super guarantee Eligible Person	\$5,401 up to \$24,999	\$25,000 up to \$49,999	\$50,000 up to \$74,999	\$75,000 up to \$99,999	\$100,000 up to \$149,999	\$150,000 and over	All
20 to 24	81%	34%	20%	24%	44%	30%	50%
25 to 29	37%	27%	16%	17%	13%	49%	38%
30 to 34	13%	18%	13%	17%	12%	29%	31%
35 to 39	28%	12%	20%	21%	17%	23%	36%
40 to 44	17%	22%	17%	20%	13%	26%	33%
45 to 49	18%	25%	17%	31%	25%	22%	32%
50 to 54	34%	15%	15%	37%	37%	15%	33%
55 to 59	47%	22%	14%	39%	14%	11%	27%
60 to 64	50%	7%	29%	14%	42%	66%	35%
All	52%	34%	20%	25%	25%	35%	48%

Source: ISA estimates using the ATO 2% Sample file for 2016-17

Note: Table is for those not making voluntary contributions in 2016-17

The Employer Use of Salary Sacrifice to Meet Super Guarantee Obligations

The current version of Section 23 of *Super Guarantee Administration Act 1992* bases the super guarantee charge on the level of employer contributions irrespective of whether the contribution contains salary sacrifice amounts.

The Government failed to pass the legislation which would stop this from happening by pairing the good legislation with choice legislation which would nudge workers into poor performing retail funds.

Because this loophole remains, rogue employers are using salary sacrifice contributions to reduce their super guarantee obligation for those workers.

The ATO measures salary sacrifice contributions as Reportable Employee Superannuation Contributions – RESC.

Table 6 shows that in 2016-17 an estimated \$562 million of salary sacrifice contributions were used to remove the apparent super guarantee gap in payments for 171,000 workers. In addition, \$977 million of salary sacrifice were used to lower the employer gap in contributions but did not remove it for 199,750 workers.

This shows more than 370,000 workers have been impacted, missing out on more than \$1.5 billion in super guarantee contributions. If these amounts were counted the total underpayment would be a staggering \$7.4 billion in 2016-17.

Table 6 – Use of Salary Sacrifice to Meet Employer Super Guarantee Obligations 2016-17

	\$ Millions	Number of super guarantee Eligible Workers
RESC used to remove employer GAP	\$561.90	171,700
RESC used to reduce employer GAP and super guarantee gap	\$977.36	199,750
TOTAL	\$1,539.27	371,450

Source: ISA estimates using the ATO 2% Sample file for 2016-17

5. Who is More at Risk of Super Guarantee Underpayment?

The analysis shows that men, low wage earners and those in blue collar occupations are more likely to be underpaid employer superannuation. Of particular concern is that almost one in two young adults earning under \$30,000 per annum are underpaid superannuation and are significantly over-represented among those underpaid.

However, in number and total dollar terms, the majority of aggregate underpaid super is for people with incomes above \$50,000 per annum – indicating that underpayment occurs across the workforce.

The below tables examine the prevalence of gender, occupation, wages and age as risk factors for unpaid super.

Table 7 – Gender and Super Guarantee Underpayment

ISA Estimates of super guarantee underpayment in 2016-17			
Gender	Number Underpaid	Proportion of super guarantee Eligible population underpaid	Amount of Underpayment \$Billions
Male	1,578,050	33.5%	\$3.79
Female	1,271,850	28.9%	\$2.11
All	2,849,900	31.3%	\$5.90

Source: ISA estimates using the ATO 2% Sample file for 2016-17



Table 8 – Occupation and Super Guarantee Underpayment

ISA Estimates of super guarantee underpayment in 2016-17			
Occupation	Number Underpaid	Proportion of super guarantee Eligible population underpaid	Amount of Underpayment \$Millions
Machinery operators and drivers	250,500	44.6%	386.4
Labourers	384,050	42.4%	417.0
Consultants, apprentices and type not specified or not listed	159,150	41.0%	467.9
Technicians and Trades Workers	433,050	39.1%	772.8
Occupation not listed/ Occupation not specified	2,350	34.3%	5.0
Community and Personal Service Workers	310,400	31.1%	468.0
Sales workers	195,450	28.4%	188.3
Managers	320,450	27.8%	1,093.8
Clerical and Administrative Workers	346,200	27.7%	737.7
Professionals	448,300	21.8%	1,362.7
All	2,978,750	33.4%	\$5.94

Source: ISA estimates using the ATO 2% Sample file for 2016-17

Table 9 – Wage, Salaries and Super Guarantee Underpayment

ISA Estimates of super guarantee underpayment in 2016-17			
Wages and Salaries	Number underpaid	Proportion of super guarantee Eligible population underpaid	Amount of Underpayment \$Millions
\$5,401 up to \$19,999	552,250	48.0%	\$304.7
\$20,000 up to \$29,999	339,650	36.4%	\$284.2
\$30,000 up to \$39,999	323,550	31.4%	\$360.9
\$40,000 up to \$49,999	294,500	26.6%	\$394.1
\$50,000 up to \$74,999	604,100	26.9%	\$1,150.0
\$75,000 up to \$99,999	367,700	28.4%	\$1,165.5
\$100,000 up to \$149,999	265,050	28.0%	\$1,268.2
\$150,000 up to \$199,999	61,450	25.4%	\$374.7
\$200,000 and over	41,650	26.0%	\$597.2
All	2,849,900	31.3%	\$5,899.5

Source: ISA estimates using the ATO 2% Sample file for 2016-17

Table 10 - The Probability of Being Underpaid by Age and Wage Group

Wages and Salaries						
Age of tax filer	\$5,401 up to \$29,999	\$30,000 up to \$49,999	\$50,000 up to \$74,999	\$75,000 up to \$99,999	\$100,000 and over	All
20 to 29	47.1%	33.2%	28.8%	31.2%	37.0%	37.0%
30 to 39	47.9%	32.6%	28.1%	25.9%	26.3%	32.0%
40 to 49	40.1%	26.4%	26.7%	28.2%	26.0%	28.8%
50 to 59	35.0%	22.9%	24.9%	31.1%	28.7%	27.8%
60 to 64	30.4%	20.9%	23.8%	27.2%	24.0%	25.0%
All	43.5%	29.1%	27.1%	28.5%	27.3%	31.5%

Source: ISA estimates using the ATO 2% Sample file for 2016-17

Note: Table 5 suggests almost one in two young adults earning under \$30,000 are underpaid superannuation and are significantly over-represented among those underpaid.

Multiple Risk Factors

The preceding tables have looked at risk factors for super guarantee underpayment in isolation. It is also important to look at the combination of risks.

Three main risk factors are:

- Being aged under 35;
- Having a wage under \$30,000 per annum; and
- Having a blue collar occupation here defined as being a machinery operator, a labourer or a technician or trade worker.

ISA estimates that 2.13 million of the 2.85 million super guarantee eligible people who are underpaid have one of these main risk factors – an astonishing 75 per cent. The group with one or more of the main risk factors has a 36.3 per cent chance of being underpaid compared to the general risk of 31.3 per cent.

The group who are young, earning under \$30,000 per annum, and in a blue-collar job had a 51.5 per cent chance of being underpaid super guarantee in 2016-17.

6. The Geographic Distribution of Super Guarantee Underpayment

Table 11 shows the prevalence of unpaid superannuation across States and Territories. The bigger totals go with bigger populations of employees. South Australia and Tasmania have the lowest incidence at 28.8 and 28.6 per cent, but the incidence range is low with Northern Territory having the highest incidence at 34.3 per cent.

Table 11 – Estimated underpayment of employer superannuation by State and Territory

State/Territory	People Underpaid including no payment	Percentage of super guarantee Employees Underpaid	Gap in Employer Contributions at 8.75% \$m	Average Underpayment
NSW	949,050	32.6%	\$2,003.6	\$2,111
Vic	710,450	30.8%	\$1,382.4	\$1,946
Qld	556,650	31.1%	\$1,109.9	\$1,994
SA	173,550	28.8%	\$283.5	\$1,633
WA	291,500	29.4%	\$565.5	\$1,940
Tas	51,350	28.6%	\$94.8	\$1,846
NT	35,850	34.3%	\$101.2	\$2,823
ACT	45,600	28.5%	\$167.4	\$3,672

Source: ISA estimates using the ATO 2% Sample file for 2016-17

Note: The ACT has an adjustment designed to remove public servants without employer cash superannuation contributions. People whose region was unknown or who were overseas have been omitted from the Table.

Table 12 shows that the highest accumulated super balance differences between those underpaid super guarantee in 2016-17 and those not underpaid super guarantee. In all jurisdictions except the Northern Territory the average balance difference exceeds \$20,000. Both New South Wales and Tasmania have average balances for those not underpaid (in that one year) which are more than 50 per cent higher than those that were underpaid.

Table 12 – Balance Differences by State and Territory

Super Guarantee Eligible Employees Aged 20 to 64	NOT Underpaid Super Guarantee	Underpaid Super Guarantee	Difference in Balance	Percentage Difference in Balance
State	Mean \$ 2016-17	Mean \$ 2016-18	\$	%
NSW	\$76,757	\$49,838	\$26,919	54.0%
Vic	\$77,463	\$52,890	\$24,573	46.5%
Qld	\$71,243	\$50,868	\$20,375	40.1%
SA	\$77,633	\$52,515	\$25,118	47.8%
WA	\$76,893	\$52,008	\$24,885	47.8%
Tas	\$73,375	\$48,593	\$24,782	51.0%
NT	\$66,553	\$49,432	\$17,121	34.6%
ACT	\$79,327	\$57,041	\$22,286	39.1%
All	\$75,605	\$51,099	\$24,506	48.0%

Source: ISA estimates using the ATO 2% Sample file for 2016-17



7. Fixing the Problem

Industry super funds take their obligations to recover unpaid super guarantee on behalf of their members seriously, and spend significant resources doing so. Unions also devote significant resources to do the same, recovering unpaid entitlements including super guarantee on behalf of members.

Despite best efforts, those acting on behalf of employees are limited by the lack of information on the wages on which payments should be based. While the ATO has considerably increased the information available on these wages through changes to Single Touch Payroll, significant concerns remain about how effective the new compliance measures will be, given the weak enforcement and regulation of the current system.

The simple, and most effective fix, is for the Government of the day to change the law and legislate that employers must deposit a super contribution into an employees' account at the same time as they pay their salary.

Industry Fund Action to Uncover Unpaid Super Guarantee

Unlike retail funds, Industry super funds engage a credit control and debt recovery provider, Industry Fund Service (IFS) Unpaid Super, which acts as safe-keeper of members' super guarantee entitlements.

IFS Unpaid Super focuses exclusively on recovering unpaid super guarantee contributions for members of industry super funds.

Through specialised legal and insolvency services IFS Unpaid Super has recovered more than \$1.2 billion in super guarantee entitlements over the past two decades.

Case Study

IFS Unpaid Super recently settled a legal case for a member of an industry super fund, where over \$30,000 of super guarantee entitlements were recovered for the member.

During discussions with the member, the IFS Unpaid Super team had identified that the member's registered commencement date of employment and their actual commencement date were quite different. The commencement date showing on the employer account was April 2015, but their actual commencement date was March 2010.

The discovery of this information resulted in IFS Unpaid Super recovering super guarantee payments for the member for the correct – and much longer – arrears period.

ATO Compliance Performance

This report highlights not enough is being done to prevent and detect underpayment. In a compulsory system this is not a burden that should fall to individuals to solve.

The ATO Annual Report 2017-18 reveals some progress has been made to recover unpaid super through compliance activities, but the amounts raised are a drop in the ocean compared to the \$5.9 billion Australians are being short-changed in unpaid super.

Less than 50 per cent of the debts raised are actually collected.

Table 13 reproduces numbers from page 70 of the ATO Annual Report.

Table 13: ATO Super Guarantee Compliance Activity, 2015-16 To 2017-18

ATO Compliance Criterion	2015-16	2016-17	2017-18
Number of employees who have had superannuation guarantee entitlements raised as a result of:			
* ATO compliance activities	94,963	69,705	237,945
* voluntary disclosures	111,518	77,344	77,785
Value of Superannuation Guarantee charge			
* Raised (including penalties and interest)	\$670.40	\$603.50	\$1,107.20
* collected \$m	\$341.30	\$282.90	\$440.90
Value of Superannuation Guarantee entitlements distributed to members \$m	373.3	281.1	401.6
Value of superannuation guarantee debt on hand \$billions	1.36	1.5	1.9

Source: Page 70, ATO Annual Report for 2017-18

Between 2016-17 and 2017-18 the ATO substantially increased its compliance activity, partly in response to ISA's analysis of super guarantee underpayment.

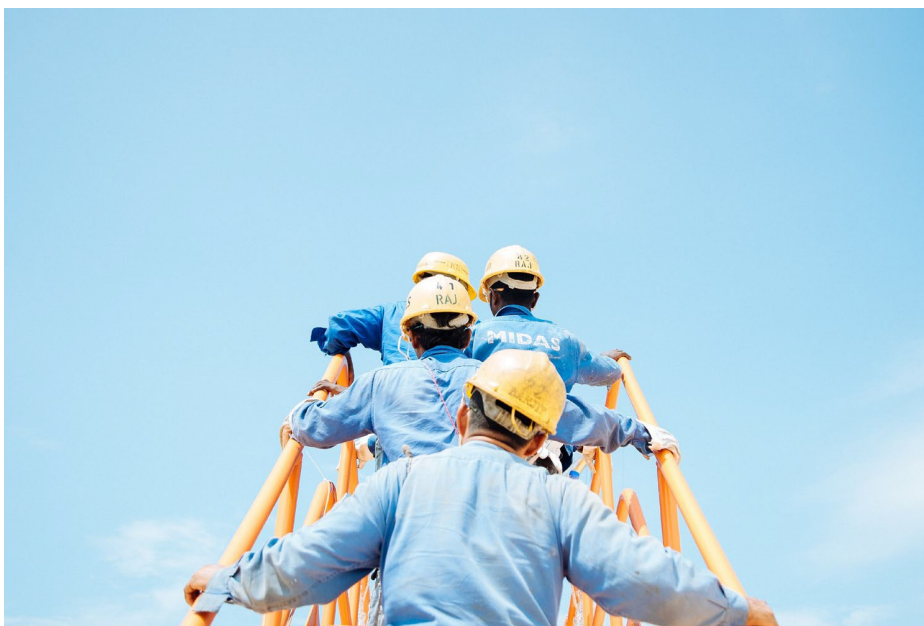
However, the total number of employees covered in 2017-18 of 315,730 is just 11 per cent of the cases estimated from the ATO's own distributional data by ISA.

In 2017-18 the ATO raised \$1.1 billion in super guarantee charge debts but only collected \$440 million – about 40 per cent. The debt raised is only 18 per cent of the debt estimate of ISA made using the ATO's own data.

In Senate Estimates on 10 April 2019 the ATO gave evidence on how it carefully considers the employers' circumstances in raising super guarantee debt and associated penalties. In particular:

- the announced but not legislated super guarantee amnesty has raised only about one tenth of a normal years super guarantee liabilities;
- employers who have admitted breaking the law will not be flagged for any future compliance checks; and
- not a single maximum 200 percent penalty has been applied in the last year.

The failure to detect cases and impose penalties creates a moral hazard where employers might be prepared to take the risk knowing they won't be caught or if they are only have to repay what is owed with nominal interest. This highlights the ATO's current enforcement and compliance systems are still not adequate, and reinforces the need for stronger penalties, more enforcement and legislative change to end the unpaid super guarantee once and for all.



Actions Required

ISA has a 4-point action plan to restore the balance and deliver Australian workers their rightful super entitlements.

1. Mandate payment of super with payment of salary

Under current laws, employers can make super contributions on a quarterly basis, regardless of what appears on an employee's payslip. Research shows that some employers take advantage of this flexibility by delaying super contributions well beyond three months leading to large liabilities that cause cash-flow difficulties. Changing the law to mandate employer's payment of super at the time of an employee's salary is a simple change that will allow payments to be more closely tracked by both employees and the ATO, reducing non-compliance.

2. Better monitoring and stronger enforcement

Despite collecting significant data, the ATO carries out too little proactive enforcement of unpaid super. Incredibly the bulk of unpaid super cases actioned by the ATO are the result of employee complaints or employers self-reporting their non-compliance. The monitoring, reporting and enforcement obligations on the ATO should be strengthened. Other relevant agencies should have greater scope to work with the ATO to recover unpaid super including the Fair Work Ombudsman and super funds acting on behalf of members.

3. Utilising penalties

Under current laws, company directors are personally liable for unpaid super and financial penalties for employers of up to 200 percent can be imposed – although rarely are. New laws include criminal penalties for employers who refuse to pay a Superannuation guarantee charge liability – these are welcome. To provide an adequate deterrence such penalties must be utilised rather than being discretionary. Few other breaches of the law involve optional penalties.

4. Extending the safety net for unpaid entitlements

Employees of companies with insufficient assets to pay their wages, leave and redundancy entitlements are protected by a Government safety net, the Fair Entitlements Guarantee.

Currently the Fair Entitlements Guarantee does not cover any form of superannuation contributions. The predecessor to Fair Entitlements Guarantee, the General Employee Entitlements and Redundancy Scheme, also did not cover unpaid super guarantee, but did fund 3 months of superannuation contributions. The Fair Entitlements Guarantee should be expanded to include unpaid super.

Appendix A: Methodology for the Update of Unpaid Super Results to 2016-17

The ISA methodology for estimating underpaid superannuation at a national level uses the 2016-17 Australian Taxation Office (ATO) 2 per cent anonymous sample file of personal tax and superannuation records.

To calculate the rate of super guarantee paid compared to what should have been paid it is necessary to:

- Isolate records in the ATO dataset which are for people who should receive the super guarantee;
- Adjust for the maximum super guarantee contributions base;
- Create an estimate of ordinary time earnings (the super guarantee base) from the salary and wage data on the ATO individual tax return; and
- Adopt conservative cutouts for apparent underpayments which provide a margin of error for the imprecision in the overtime adjustment and which also allow for the lagged quarterly payment of super guarantee.

The following sub-sections discuss how these estimates have been constructed. The sensitivity analysis for alternative methodologies is given in Industry Super Australia and CBUS (2016)³. The conclusion from the sensitivity analysis was that the ISA methodology is robust and considerably better than previous published estimates.

The Super Guarantee Population

The method excludes people who are not likely to be in the super guarantee population:

- People under 20 (which is as close to under 18 as the data allows);
- People with wages under \$5400 (as an approximation for the \$450 per month super guarantee threshold);
- People who have less than 10 per cent of the assessable income from wages and salaries (the 'ten per cent rule' is one test for the self-employed); and
- People with partnership or trust income (another test for the self-employed).

In addition, records without salary and wages have been excluded from the analysis.

The difference between this analysis and the December 2016 ISA/CBUS analysis is that people in the super guarantee population with no employer contributions have been included, and the CBUS estimates of the cash economy have been excluded. The current analysis indicates what the ATO could find if it were prepared to base estimates of super guarantee compliance on distributional analysis of its own superior tax data about individuals.

The records on the ATO file represent 13.86 million people. The exclusions noted above reduce the super guarantee population represented in this analysis to 9,112,300 people. As hoped, this estimate of the employees in the super guarantee population is significantly less than the ABS estimate of employees in 2017, which was 10,122,500 (ABS Cat No. 6333.0).

³ *Overdue: Time For Action On Unpaid Super (Industry Super Australia and CBUS December 2016).*

The Maximum Super Guarantee Contributions Base

In 2016-17 the annual aggregate for the maximum super guarantee contribution base was \$206,480. With a 9.5 per cent contribution rate, this meant that the maximum required super guarantee contribution was \$19,616.

In the analysis, people with ordinary time earnings over \$206,480 and super guarantee or employer contributions over \$19,616 have been treated as fully super guarantee compliant. However, people with ordinary time earnings over \$206,480 and super guarantee or employer contributions less than \$19,616 have been assessed for compliance using the ratio of their contributions to wages.

The adjustment for the maximum super guarantee contribution base is also important because it deals with very high employer contributions, which the ATO has top-coded to a limited set of values in the sample file, as compliant.

No Split of Employer Contributions

The Member Contribution Statement (MCS) portion of the records on the ATO sample file aggregate employer contributions into one field. There is no type of superfund variable on the file.

The individual tax return portion of the file has a field for salary sacrifice contributions based on the RESC data provided by employers on their payment summaries for the individual. This was used in the first report to differentiate moral super guarantee contributions from legally required super guarantee contributions.

The ATO estimate of employer contributions includes salary sacrifice contributions.⁴ This legal definition is used in the current analysis which includes all employer contributions in the numerator of the super guarantee rate. Using RESC to satisfy super guarantee obligations is legal, but not desirable in the view of ISA.⁵

Estimating Ordinary Time Earnings from the ATO Salary and Wage Data

The ATO guidelines to employers for calculating ordinary time earnings give it a broad base. The checklist can be found at - <https://www.ato.gov.au/business/super-for-employers/how-much-to-pay/checklist--salary-or-wages-and-ordinary-time-earnings/>

The ruling can be found at: <http://law.ato.gov.au/atolaw/view.htm?DocID=super+guaranteeR/super+guaranteeR20092/NAT/ATO/00001&PiT=99991231235958>

Perhaps the main things to notice for current purposes are:

- That for workers without set work hours, all hours are regarded as ordinary time and earnings regarded as OTE;
- That shift allowances for public holidays, weekends and night shift are included in OTE, and
- That allowances which reimburse expenses are not part of OTE.

⁴ See Section 23 of the Superannuation Guarantee Administration Act which has not yet been amended by legislation stalled in the Parliament.

⁵ The ISA/CBUS paper from December 2016 includes a sensitivity analysis on the use of all employer contributions compared to super guarantee contributions defined as employer contributions minus salary sacrifice contributions. If the result of the calculation is negative, the super guarantee contribution is set to zero.

The ATO data for salary and wages is only that recorded as salary and wages by employers. It does not include allowances for expenses, director's fees or lump sum termination payments. Hence the salary and wage data on the file largely differs from the OTE base of the super guarantee because it includes overtime. As you would expect, the ATO data does not contain hours worked, which is not recorded on payment summaries.

The current methodology calculates an ordinary time earnings adjustment factor using the ratio of the ABS measures for ordinary time earnings to total earnings for males and females separately. In May 2017 these ratios were 94.76 per cent for full-time adult males and 98.64 per cent for full-time adult females. These factors have been applied at all wage levels because previous analysis of hours of work and overtime payments from the 2013-14 ABS Survey of Income and Housing (SIH) indicates that part-time and full-time workers can be found at most income levels. The adjustment of part-time wages down raises the apparent ratio of contributions and makes the analysis conservative.⁶

Adopting Conservative Cutouts

In 2016-17 the super guarantee rate was 9.5 per cent.

It is also the case that our adjustment for overtime is broad and the data includes some perturbation. Therefore, estimates of proportions and means will be valid for large groups, but questionable for small groups. Most estimates in this paper are for large groups of people.

Given the imprecision in the overtime adjustment individuals below 8.75 per cent are treated as not being fully super guarantee compliant in the current analysis.

Using an 8.75 per cent cut-off for a year in which the super guarantee was 9.5 per cent gives an estimate that 31.3 per cent of all super guarantee contributors were under-paid super guarantee in 2016-17, based on their estimated ordinary time earnings

Geographic Breakdown of Unpaid Superannuation 2016-17

The geographic analysis is based on the correspondence between postcodes and regions within states supplied with the ATO file. The ATO supplied regions have been decomposed into postcode estimates by ISA using the 2016 Census estimates of the number of employees by Census postal areas.

The ATO file does not contain postcode data. ISA has based its decomposition within regions on the almost perfect (0.997) correlation between Census employee counts and the ISA estimate of employees underpaid superannuation at the ATO region level. The Census estimate of employees by postcode has been used to create the postcode estimates. The Commonwealth Department of Jobs and Small Business publishes a correspondence between postcodes and DJSB employment regions. Not all postcodes are coded into DJSB employment regions in the correspondence and uncoded postcodes have been omitted.

⁶ The ISA/CBUS paper of December 2016 includes a sensitivity analysis to the overtime adjustment. An alternate factor differing by gender and income level has been constructed from the ABS SIH and applied it to people with wages in the ATO 2013-14 sample file by wage band. The ABS survey-based adjustment factor is the average of an adjustment based on hours worked for full-time workers and an adjustment based on overtime dollars included in wages, to get an overall adjustment close to the 95 per cent factor for persons based on ABS AWOTE data.

