

# **Addressing Superannuation Guarantee Non-Compliance**

Australian Taxation Office

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Canberra ACT  
28 April 2022

Dear Mr President  
Dear Mr Speaker

In accordance with the authority contained in the *Auditor-General Act 1997*, I have undertaken an independent performance audit in the Australian Taxation Office. The report is titled *Addressing Superannuation Guarantee Non-Compliance*. Pursuant to Senate Standing Order 166 relating to the presentation of documents when the Senate is not sitting, 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



Grant Hehir  
Auditor-General

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

## AUDITING FOR AUSTRALIA

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# Audit snapshot

## Auditor-General Report No.24 2021–22

### *Addressing Superannuation Guarantee Non-Compliance*



#### Why did we do this audit?

- ▶ Employer non-compliance with Superannuation Guarantee obligations has an impact on the retirement incomes of Australians.
- ▶ This topic was identified as a parliamentary priority in 2019–20.



#### Key facts

- ▶ In respect of superannuation, the Australian Taxation Office's (ATO's) role is to encourage voluntary compliance and enforce the penalties of non-compliance.
- ▶ Total superannuation assets in Australia as at 30 June 2021 were \$3.3 trillion.
- ▶ Employer Superannuation Guarantee contributions in 2020–21 were \$74.1 billion.
- ▶ Employers who fail to pay Superannuation Guarantee are subject to a tax called the Superannuation Guarantee Charge.
- ▶ The ATO's Superannuation Guarantee compliance activities raised liabilities of \$1.7 billion in 2020–21.



#### What did we find?

- ▶ The ATO's activities in addressing Superannuation Guarantee non-compliance are partly effective.
- ▶ The ATO's risk-based Superannuation Guarantee compliance framework is partly effective.
- ▶ The ATO's compliance activities are partly effective in achieving greater employer compliance with Superannuation Guarantee obligations. They have had a small influence on reducing the Superannuation Guarantee gap (an estimate of non-compliance) over time.
- ▶ Compliance activities continue to be mainly corrective and reactive.



#### What did we recommend?

- ▶ There were three recommendations relating to: implementing a preventative compliance strategy; use of enforcement and debt-recovery powers; and enhanced performance reporting.
- ▶ The ATO agreed to two recommendations, and agreed with qualification to the third.

95%

of Superannuation Guarantee contributions are paid without ATO intervention

\$2.9 bn

in unpaid Superannuation Guarantee Charge was owed as at 30 June 2021

55%

of Superannuation Guarantee Charge raised was collected (average over four years to 2020–21)

# Summary and recommendations

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## Background

1. The Superannuation Guarantee (SG) system was introduced in 1992 as a means of funding the retirement of individuals. The SG system prescribes a level of superannuation support to be provided by employers to employees. Total superannuation assets in Australia as at 30 June 2021 were \$3.3 trillion. Employer SG contributions in 2020–21 were \$74.1 billion.
2. The SG system operates largely without regulatory intervention. The Australian Taxation Office (ATO) has reported a high rate of voluntary compliance with SG. In respect of superannuation, the ATO's role is to encourage voluntary compliance and enforce the penalties of non-compliance.

## Rationale for undertaking the audit

3. Employer non-compliance with SG obligations has an impact on the retirement incomes of Australians, and has been subject to two major reviews in recent years. This topic was identified as a parliamentary priority in 2019–20. The audit provides assurance about the effectiveness of ATO activities aimed at fostering participation in the superannuation system.

## Audit objective and criteria

4. The objective of the audit was to assess the effectiveness of the ATO's activities in addressing SG non-compliance.
5. To form a conclusion against the audit objective, the following criteria were adopted:
  - Does the ATO have an effective risk-based SG compliance framework?
  - Are the ATO's compliance activities effective in achieving greater employer compliance with their SG obligations?

## Conclusion

6. The ATO's activities in addressing Superannuation Guarantee non-compliance are partly effective.
7. The ATO's risk-based SG compliance framework is partly effective. Although SG risks are assessed and treated, the risk rating for unpaid SG is lower than the ATO risk framework would indicate if consideration of risk to revenue was applied. Although there is a compliance strategy to shift to a more preventative approach, it is not yet supported by effective data analysis.
8. The ATO's compliance activities are partly effective in achieving greater employer compliance with SG obligations. The extent of improvement in employer compliance is difficult to establish due to a lack of performance information. Although there has been an increase in the absolute amount of debt raised and funds collected, the ATO has acknowledged that it has a small influence on the net SG gap. Planned targeted reforms to improve the integrity and administration of the SG system were partly implemented. Although the ATO did not fully employ its SG debt-recovery powers during 2020, in line with its suspension of other ATO-initiated

compliance work during the COVID-19 pandemic, SG debt increased at a higher rate than total ATO debt in 2020–21.

## Supporting findings

### Risk-based compliance framework

9. Processes in place to identify and monitor risks to SG compliance are partly effective. SG risks are included in enterprise and business line risk assessments, however the ATO does not assess risk to revenue, which leads to a lower than merited risk rating. The mechanisms for escalating risks identified by the business line risk committee are yet to be fully developed. The ATO assesses its controls for SG compliance risk as ‘partially effective’. (See paragraphs 2.2 to 2.31).

10. The ATO has partly implemented a risk-based compliance strategy. There is a compliance strategy that is designed to shift the focus from a reactive approach through enforcement, to a preventative approach through encouraging voluntary compliance. The compliance strategy has not been fully implemented, and compliance activities remain largely reactive. A preventative approach is highly dependent on the implementation of a data-matching solution. The use of real-time data-driven analysis to inform risk assessment has been limited by data and systems issues. (See paragraphs 2.32 to 2.63).

### Effectiveness of compliance activities

11. While there is some evidence that the ATO’s compliance activities are improving employer compliance, the extent of improvement cannot be reliably assessed. Public reporting of performance does not provide adequate information to evaluate the effectiveness of the ATO’s SG compliance activities. The ATO advised that a growing backlog of employee notifications of employer non-compliance was cleared by December 2021. There has been an increase in the absolute amount of debts raised and funds collected over the past four years. Although there has been a downward trend since 2013–14, the net SG gap reported for 2018–19 was little different from the gap reported for 2009–10. Between 2013–14 and 2018–19, the ATO’s compliance activities detected and collected unpaid SG amounting to less than an average of 15 per cent per year of the gross SG gap. The ATO did not consistently meet service commitments for reactive corrective compliance activities. A commitment that 40 per cent of corrective compliance activities would be proactive was reported as met in three of four years to 2020–21. However, there has been a shift from resource-intensive audit activity to low-touch nudges. (See paragraphs 3.2 to 3.37).

12. The SG Taskforce partly achieved the planned outcomes. It achieved a higher strike rate from a smaller case pool, but it did not achieve several of its objectives associated with the usage of Single Touch Payroll and other data. The level of proactive compliance activities undertaken by the ATO declined after the SG Taskforce was introduced. The SG Amnesty supported the ATO’s transition to a preventative compliance approach by encouraging employers to self-correct non-compliance and is associated with higher voluntary employer lodgments. The ATO did not report on SG Taskforce outcomes. Its reporting of SG Amnesty outcomes could have been improved by adjusting the results achieved to account for the business-as-usual level of voluntary lodgments. (See paragraphs 3.38 to 3.58).



13. The ATO has been partly effective in using its debt recovery powers to collect unpaid SG. Pauses in enforcement during the 2019–20 bushfires and COVID-19 pandemic impacted debt recovery as demonstrated by:

- stronger enforcement powers received in January 2019 have largely not been exercised;
- firm compliance activity was used less frequently during 2019–20 and 2020–21; and
- elements of new systems were turned off.

14. Pauses in enforcement were intended not to apply to egregious and criminal cases but enforcement against phoenix operators through Director Penalty Notices also decreased from 2018–19. Compared to the increase in total ATO debt during 2020–21, SG debt increased disproportionately. (See paragraphs 3.59 to 3.90).

## Recommendations

**Recommendation no. 1** The ATO implement the proposed preventative approach to SG compliance as documented in the risk-based compliance strategy.  
**Paragraph 2.64**

**Australian Taxation Office response:** *Agreed*

**Recommendation no. 2** The ATO assess its performance measures against the Public Governance, Performance and Accountability Rule 2014 and enhance its public SG performance information by:  
**Paragraph 3.10**

- (a) setting targets for measures, including the SG gap; and
- (b) including explanations for performance results, including performance changes over time.

**Australian Taxation Office response:** *Agreed with qualification (a); Agreed (b)*

**Recommendation no. 3** To maximise the benefit to employees' superannuation funds, the ATO:  
**Paragraph 3.91**

- (a) make more use of its enforcement and debt recovery powers;
- (b) develop performance measures for evaluating the effectiveness of debt recovery; and
- (c) consider the merit of incorporating debtors holding the majority of debt into the prioritisation of debt recovery actions.

**Australian Taxation Office response:** *Agreed*

## Summary of entity response

15. The Australian Taxation Office's summary response is provided below and its full response is included at Appendix 1.

The Australian Taxation Office (ATO) welcomes the review that found the ATO's risk-based compliance framework and compliance activities are partly effective in addressing Superannuation Guarantee (SG) non-compliance. We consider the report supportive of the direction that we are taking.

We acknowledge the critical role that the ATO has to ensure compliance with SG obligations and reducing the overall SG Gap. We are pleased that the report recognises the work the ATO is undertaking to move towards more preventative and proactive approaches to improve compliance.

In recent years the ATO has increased the visibility of employer superannuation contributions through myGov and we continue to investigate every complaint received in relation to the non-payment of SG as we work to reduce the overall SG Gap. With access to greater levels of real time payroll data through Single Touch Payroll, we acknowledge the challenge we have to effectively utilise these large volumes of data in real time to proactively improve compliance. We recognise the complexities we face around insolvent entities and will continue our consideration of this employer population through our debt recovery engagement actions. We also acknowledge complexities associated with the timing of legislated SG reporting obligations.

The report makes 3 recommendations for the ATO, for which the ATO agrees in part. We will make more use of our debt recovery powers now that firmer recovery action has recommenced following the pandemic and note that we will explore opportunities to enhance our performance measures and commentary on SG performance information.

## Key messages from this audit for all Australian Government entities

16. Below is a summary of key messages, including instances of good practice, that have been identified in this audit and may be relevant for the operations of other Australian Government entities.

### **Governance and risk management**

- Entities should ensure that enterprise-level risk committees have appropriate risk escalation processes from business-level committees for high risks, and regulators should ensure that compliance risk ratings reflect all relevant criteria so that they are appropriately rated and escalated.
- Regulators should develop risk-based compliance strategies, which consider the appropriate balance of preventative, corrective, proactive and reactive compliance measures, and target the areas of highest risk.

### **Performance and impact measurement**

- To facilitate a meaningful assessment of progress and achievement, regulators should ensure that they are monitoring, evaluating against targets and reporting on their effectiveness in achieving regulatory objectives.

### **Policy/program implementation**

- Regulators should ensure that they are appropriately utilising the enforcement powers available to them to achieve program objectives.

## **Audit findings**

# 1. Background

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## Introduction

1.1 The Superannuation Guarantee (SG) system was introduced in 1992 as a means of funding the retirement of individuals and to provide a higher standard of retirement living. The SG system prescribes a level of superannuation support to be provided by employers to employees.

1.2 The level of prescribed employer support in 2021 is ten per cent of ordinary time earnings.<sup>1</sup> Total superannuation assets in Australia as at 30 June 2021 were \$3.3 trillion.<sup>2</sup> Employer contributions<sup>3</sup> in 2020–21 were \$98.5 billion (1.9 per cent greater than in 2019–20), of which \$74.1 billion were SG contributions (4.3 per cent greater).

1.3 The SG system operates largely without regulatory intervention. Employers make SG contributions to employees' superannuation funds either directly or via clearing houses.<sup>4</sup> The Australian Taxation Office (ATO) has reported a high rate of voluntary compliance with SG, with employers paying without intervention about 95 per cent on average of the SG they are required to pay.<sup>5</sup>

1.4 Unpaid SG results in smaller superannuation fund balances and loss of compound interest.<sup>6</sup> A younger employee who is not paid the full amount of SG that they are owed experiences a larger decrease in their superannuation fund balance and eventual retirement income than an older worker who is not paid the SG for the same period.<sup>7</sup>

## Legislative and revenue framework

1.5 The *Superannuation Guarantee (Administration) Act 1992* (the SGA Act) sets out the administrative arrangements for the operation of the SG system. The Commissioner of Taxation is responsible for the day-to-day administration of the SGA Act. The ATO's purpose is:

to contribute to the economic and social wellbeing of Australians by fostering willing participation in the tax and superannuation systems.<sup>8</sup>

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1 Ordinary time earnings are the amount earned for ordinary hours of work and generally include leave, allowances, commissions and bonuses.

2 Australian Prudential Regulation Authority, *Quarterly superannuation performance statistics highlights*, June 2021, pp. 3 and 4.

3 Employer contributions include all superannuation payments including salary sacrifice and SG.

4 For example, the Australian Taxation Office provides the Small Business Superannuation Clearing House as a free online service. Eligible small businesses pay super for all their employees through a single payment to the clearing house, which distributes the money to each employee's super fund according to the employee's instructions.

5 ATO, *Super guarantee system* [Internet], available from <https://www.ato.gov.au/About-ATO/Research-and-statistics/In-detail/General-research/Tax-gap/Previous-years-analysis/Superannuation-guarantee-gap-2016-17/?anchor=SuperGuaranteeSystem#SuperGuaranteeSystem> [accessed 29 October 2021].

6 The ATO refers to 'unpaid SG' as 'unreported SG'.

7 Treasury, *Retirement Income Review: Final Report*, Canberra, 2020, p. 304.

8 ATO, *Corporate Plan 2021–22*, p. 6.

1.6 The *Superannuation Guarantee Charge Act 1992* (the SGC Act) imposes a tax called the Superannuation Guarantee Charge (SGC) on employers who fail to pay SG.<sup>9</sup> This tax is payable to the ATO, which is tasked with collecting it and paying an equivalent amount into the employee's superannuation fund. All employers are potentially liable for the tax if the employer has not provided the minimum level of superannuation support for each employee, unless the employer is exempt in respect of a particular employee.<sup>10</sup>

1.7 Section 3 of the SGC Act incorporates the SGA Act; that is, the SGA Act is to be read as one with the SGC Act. The SGA Act includes at Part 3 the formulas to calculate the amount of Superannuation Guarantee Charge to be imposed, and at Part 8 (section 71) a special appropriation to enable payments from the Consolidated Revenue Fund to the benefit of employees.<sup>11</sup> Section 71 of the SGA Act appropriates those amounts of Superannuation Guarantee Charge collected for the benefit of employees and empowers the Commissioner of Taxation to pay them to the employees' superannuation funds. Superannuation Guarantee Charge raised but not collected is a debt to the Commonwealth.

1.8 The components of the Superannuation Guarantee Charge are in Table 1.1. The SG shortfall is the amount of unpaid SG for the quarter, and is calculated on employees' salary and wages, including any overtime.<sup>12</sup>

**Table 1.1: Superannuation Guarantee Charge components**

Component <sup>a</sup>	Revenue remitted to Consolidated Revenue Fund	Appropriation
SG shortfall — superannuation	Superannuation calculated on salary and wages (including any overtime) +	Appropriated to employees' superannuation funds under section 71 of the SGA Act
SG shortfall — choice liability <sup>b</sup>	Based on the SG shortfall and capped at \$500 +	
Nominal interest, a proxy for superannuation fund earnings	10 per cent per annum (accrued from the start of the relevant quarter)	
Administration fee, to recover costs incurred in administering the tax	\$20 per employee per quarter	Available under section 83 of the Australian Constitution for an appropriation to be spent on any purpose for which the Commonwealth may lawfully spend money

Note a: Penalties are applied in addition to the Superannuation Guarantee Charge and are shown in Appendix 3.

Note b: Choice liability is imposed when there is a failure to comply with the choice-of-fund requirements.

Source: ANAO analysis of the SGC and SGA Acts.

9 *Superannuation Guarantee Charge Act 1992*, sections 5 and 6. The SGC was confirmed as a tax by the High Court of Australia in *Roy Morgan Research Pty Ltd v Commissioner of Taxation* [2011] HCA 35, [49].

10 Explanatory Memorandum, Superannuation Guarantee (Administration) Bill 1992, p. 1.

11 The Consolidated Revenue Fund was established under section 81 of the Australian Constitution and consists of all revenues and moneys raised or received by the executive government of the Commonwealth.

12 This differs from SG payments that are paid by the due date, which are calculated on ordinary time earnings.

1.9 The Superannuation Guarantee Charge is intended to act as:

an incentive for employers to meet their own obligations, and ... a support mechanism for employees where those obligations are not met.<sup>13</sup>

The Parliament intended the SGC Act and the SGA Act to be burdensome and punitive to encourage employer compliance. The Treasurer explained this when announcing the SG in the 1991–92 Budget speech:

In 1986, 3% superannuation was awarded by the then Conciliation and Arbitration Commission as part of a productivity and wage package. This award requirement has not been complied with in full. The Government will therefore introduce a superannuation guarantee levy, starting from July [1992]. The Government will legislate for a prescribed level of superannuation support to be provided by employers to all of their employees. Employers failing to meet this level will be subject to a superannuation levy which will not be deductible for income tax purposes.<sup>14</sup>

1.10 The long title of the SGC Act states that it is:

An Act to impose a charge on any shortfall in the amount contributed by employers to [Retirement Savings Accounts] or superannuation funds for the benefit of employees.

The long title indicates that, in respect of employees, the effect of the SGC Act is remedial and beneficial. In the usual course of Commonwealth administration, ‘ambiguity in a piece of legislation which is beneficial in character ... should be resolved in a way that is most favourable to the people the Act is intended to benefit.’<sup>15</sup>

## **The regulatory role of the Australian Taxation Office**

1.11 In respect of superannuation, the ATO’s role is to encourage voluntary compliance and enforce the penalties of non-compliance. The ATO’s strategic objectives include providing assurance across the superannuation system; designing a better superannuation system to make it easy to comply and hard not to comply; and working with and through others to deliver an efficient and effective superannuation system.<sup>16</sup>

1.12 The SG gap is a measure of non-compliance with employer SG obligations (see Box 1).

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13 The Hon. John Dawkins MP, Treasurer, ‘Second Reading Speech: Superannuation Guarantee (Administration) Bill 1992’, *House of Representatives Hansard*, 2 April 1992, p. 1764.

14 The Hon. John Kerin MP, Treasurer, ‘Second Reading Speech: Appropriation Bill (No. 1) 1991–92’, *House of Representatives Hansard*, 20 August 1991, p. 18.

15 Department of Social Services, *Social Security Guide* [Internet], Version 1.286, Released 27 September 2021, section 1.3.1, available from <https://guides.dss.gov.au/guide-social-security-law/1/3/1> [accessed 1 November 2021].

16 ATO, *Corporate Plan 2021–22*, p. 2.

### Box 1: Calculation and reporting of the SG gap

The ATO commenced work in 2015 to develop a measure of the SG gap to assess the risk of non-compliance with SG obligations. A tax gap estimates the difference between the amount the ATO collects and what would have been collected if every taxpayer was fully compliant. The SG gap differs from a tax gap in that it is an estimation of the difference between theoretical SG contributions and the actual SG contribution amount reported to the ATO. Estimates of the SG gap are included in the suite of high-level tax gap measures that track the performance and integrity of the tax system and have been published on the ATO website since 2017.

#### ATO process for estimating the SG gap

- Step 1 — Examine and select Australian Bureau of Statistics Compensation of Employee data
- Step 2 — Apply an uplift factor for shadow economy (Step 1 adjusted)<sup>a</sup>
- Step 3 — Adjust for earnings not subject to super guarantee (Step 2 adjusted)
- Step 4 — Adjust for the impact of overtime (Step 3 adjusted)
- Step 5 — Arrive at the estimate of theoretical SG liability (Steps 1–4 combined)
- Step 6 — Compare the theoretical SG liability to the SG reported from ATO data<sup>b</sup> to estimate the gross gap
- Step 7 — Adjust the gross gap with ATO compliance activity outcomes to estimate the net gap

The ATO's methodology is 'top-down' in that it applies aggregate economic and financial data. The methodology and approach were reviewed by an independent expert panel, who assessed it as having a medium level of reliability due to the level of reliance on macro-level Australian Bureau of Statistics data and the assumptions made. The ATO advised the ANAO that the methodology is defensible and credible, and the estimates are suitable for publication.

Note a: The ATO adds a conservative estimate of the shadow economy not captured by the ABS data. This is a theoretical adjustment based on international benchmarks of 1.2 per cent.

Note b: To estimate actual payments, the ATO totals the reported payments into superannuation funds, adjusting for salary sacrifice contributions and other factors to arrive at an estimate of total SG contributions.

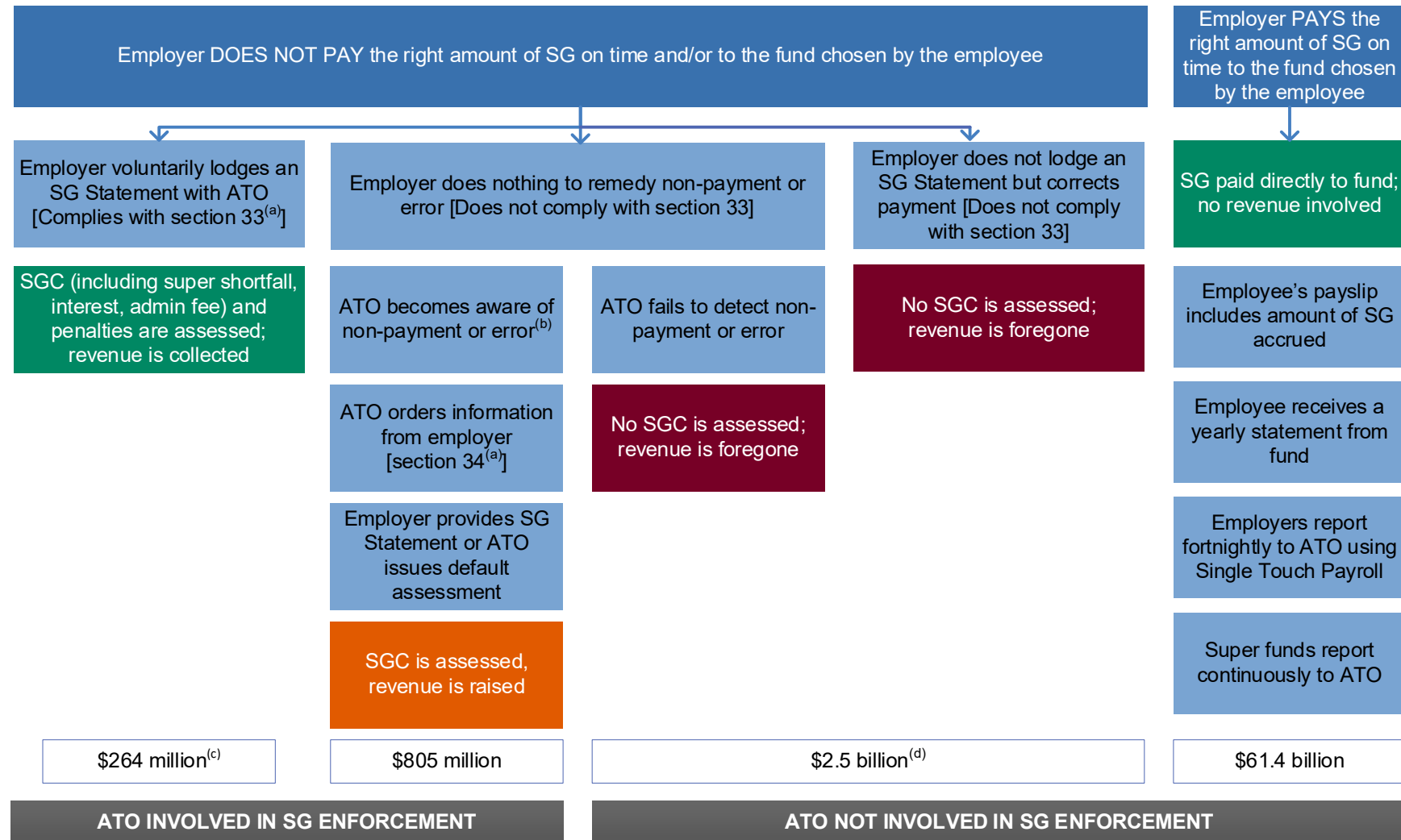
Source: ANAO analysis of ATO documentation.

1.13 The ATO's involvement in administering the Superannuation Guarantee Charge is limited to those cases where:

- employers voluntarily notify the ATO of their non-compliance by lodging an SG Statement<sup>17</sup>; or
- the ATO, after becoming aware of an employer's non-compliance, enforces the lodgment of an SG Statement and payment of Superannuation Guarantee Charge and penalties (Figure 1.1).

<sup>17</sup> This audit report uses the terminology 'SG Statement', in line with the SGA Act. Because an SG Statement, once lodged, immediately results in an SG Charge, the ATO uses the terminology 'SGC Statement'.

**Figure 1.1: The ATO's role in administering the Superannuation Guarantee Charge**



Note a: SGA Act section 33 requires the lodgment of SG Statements by employers who have failed to pay SG. Section 34 enables the ATO to require information from employers who have failed to lodge an SG Statement.

Note b: Alerted by employees (33,858 in 2018–19) or detected by proactive ATO audit (8090 in 2018–19).

Note c: Financial figures are for 2018–19 (most recent year with results for the SG gap).

Note d: Revenue foregone (\$2.5 billion) is the net SG gap reported by the ATO. The gross gap equals the net gap plus the revenue associated with ATO compliance activities (\$264 million plus \$805 million, or \$1.1 billion). The 2018–19 gross gap reported by the ATO in August 2021 was \$3.5 billion, although the component parts shown here equate to \$3.6 billion.

Source: ANAO analysis of the SGC and SGA Acts and ATO records.



## Reviews of Superannuation Guarantee compliance

1.14 An Auditor-General report and parliamentary and governmental inquiries have considered the topic of unpaid SG.

- Auditor-General Report No.39 of 2014–15, *Promoting Compliance with Superannuation Guarantee Obligations*, made four recommendations related 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.<sup>18</sup>
- In a May 2017 report, *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, the Senate Economics References Committee concluded that the approach taken by the ATO to identifying and addressing unpaid SG was inadequate, and that the ATO should shift from a reactive to a proactive stance.<sup>19</sup> As at February 2022 the government had not tabled a response to the report.<sup>20</sup>
- In July 2017 the government released the report of the Superannuation Guarantee Cross Agency Working Group, which found that 'while there is, overall, a high level of voluntary compliance by the majority of employers there is scope to improve compliance to better safeguard employee entitlements'.<sup>21</sup> The report identified two main barriers to maintaining or improving SG compliance: lack of ATO visibility over an employer's superannuation obligations to their employees and the low frequency of reporting by superannuation funds to the ATO.

1.15 The government has responded to these reviews in several ways.

- The Superannuation Guarantee Taskforce (SG Taskforce), announced in August 2017, was part of a package of reforms intended to give the ATO near real-time visibility over SG compliance by employers.
- In August 2017 the ATO published for the first time an estimate of SG non-compliance. The estimated net SG gap (unpaid SG) in 2014–15 was \$2.9 billion (5.2 per cent of the total estimated SG payments of \$54.8 billion). In 2021 the ATO estimated that the net SG gap in 2018–19 was \$2.5 billion or 3.8 per cent.<sup>22</sup>

18 Auditor-General Report No.39 2014–15, *Promoting Compliance with Superannuation Guarantee Obligations*, p. 20.

19 Senate Economics References Committee, *Superbad: Wage theft and non-compliance of the Superannuation Guarantee*, Canberra, May 2017, pp. ix–x.

20 President of the Senate, *President's report to the Senate on the status of government responses to parliamentary committee reports as at 30 June 2021* [Internet], available from [https://www.aph.gov.au/-/media/02\\_Parliamentary\\_Business/24\\_Committees/242\\_Senate\\_Committees/Government\\_responses\\_to\\_outstanding\\_to\\_committee\\_reports/Responses-outstanding-30-June-2021.pdf?la=en&hash=188AD44DBD540B5A0647ED4FFED75FD18E77DF21](https://www.aph.gov.au/-/media/02_Parliamentary_Business/24_Committees/242_Senate_Committees/Government_responses_to_outstanding_to_committee_reports/Responses-outstanding-30-June-2021.pdf?la=en&hash=188AD44DBD540B5A0647ED4FFED75FD18E77DF21) [accessed 3 December 2021].

21 Superannuation Guarantee Cross Agency Working Group, *Superannuation Guarantee Non-compliance: A report to the Minister for Revenue and Financial Services*, Canberra, 31 March 2017 [released on 14 July 2017], p. 5. The SG Cross Agency Working Group was comprised of representatives from the ATO; Treasury; Department of Employment; Australian Securities and Investments Commission and Australian Prudential Regulation Authority. It was established in December 2016.

22 The difference between the gross and the net gap is the impact of the ATO's compliance activities.

- In May 2018 the government announced a Superannuation Guarantee Amnesty (SG Amnesty) for unpaid SG for the period 1992 to 2018. The SG Amnesty was legislated in February 2020 and concluded in September 2020.<sup>23</sup>

## Rationale for undertaking the audit

1.16 Employer non-compliance with SG obligations has an impact on the retirement incomes of Australians, and has been subject to two major reviews in recent years. This topic was identified as a parliamentary priority in 2019–20. The audit provides assurance about the effectiveness of ATO activities aimed at fostering participation in the superannuation system.

## Audit approach

### Audit objective, criteria and scope

1.17 The objective of the audit was to assess the effectiveness of the ATO's activities in addressing SG non-compliance. To form a conclusion against the audit objective, the following criteria were adopted:

- Does the ATO have an effective risk-based SG compliance framework?
- Are the ATO's compliance activities effective in achieving greater employer compliance with their SG obligations?

1.18 The superannuation system has undergone significant transformation in recent years with the introduction of technology changes — SuperStream<sup>24</sup>, Single Touch Payroll<sup>25</sup> and Member Account Transaction Service<sup>26</sup> — and the implementation of policy and legislation. The audit examined the incorporation of these changes into the ATO's compliance framework, and the ATO's compliance activities since the establishment of the SG Taskforce.

1.19 In the 2020–21 Budget, the government announced the *Super Reforms – Your Future, Your Super* measures. The supporting legislation for this reform received Royal Assent on 22 June 2021.<sup>27</sup> This legislative change was not within the scope of the audit.

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23 ATO, *Superannuation guarantee amnesty* [Internet], last modified 6 July 2021, available from <https://www.ato.gov.au/Business/Super-for-employers/Missed-and-late-super-guarantee-payments/The-super-guarantee-charge/Superannuation-guarantee-amnesty/#Amountsdisclosed> [accessed 11 November 2021].

24 SuperStream is the way employers must pay employee Superannuation Guarantee contributions to super funds. Money and data are sent electronically in a standard format.

25 Single Touch Payroll involves employers reporting employees' payroll information (including salaries and wages, pay as you go (PAYG) withholding and superannuation) each time they are paid through Single Touch Payroll-enabled software. Single Touch Payroll was introduced in July 2018 for employers with 20 or more employees and is a mandatory obligation.

26 Member Account Transaction Service refers to the service for superannuation providers and their intermediaries that is used for reporting member contributions and transactions when they occur.

27 One key element is that, from 1 November 2021, where employees do not choose a super fund, most employers must check with the ATO if their employee has an existing super account, known as a 'stapled super fund', into which to pay the employee's super.

## **Audit methodology**

1.20 The audit methodology involved:

- reviewing ATO documentation;
- conducting meetings with ATO staff and external stakeholders;
- analysing SG compliance processes; and
- analysing ATO data and statistics.

1.21 The audit was conducted in accordance with ANAO Auditing Standards at a cost to the ANAO of approximately \$420,800.

1.22 The team members for this audit were Peter Hoefer, Kim Bond, Robyn Clark, Dr Patrick N. O'Neill, Amanda Reynolds, Peta Martyn and Christine Chalmers.

## 2. Risk-based compliance framework

### Areas examined

This chapter examines whether the Australian Taxation Office (ATO) has an effective risk-based Superannuation Guarantee (SG) compliance framework.

### Conclusion

The ATO's risk-based SG compliance framework is partly effective. Although SG risks are assessed and treated, the risk rating for unpaid SG is lower than the ATO risk framework would indicate if consideration of risk to revenue was applied. Although there is a compliance strategy to shift to a more preventative approach, it is not yet supported by effective data analysis.

### Areas for improvement

The ANAO made one recommendation for the ATO to implement the proposed preventative approach to SG compliance as documented in its risk-based compliance strategy. The ANAO also suggested there was scope for the ATO to work more with external stakeholders to discuss high-risk sectors and market segments.

2.1 To assess the effectiveness of the ATO's SG compliance framework, this chapter examines whether the ATO has:

- established effective processes to identify and monitor risks; and
- implemented a risk-based compliance strategy.

### Are there effective processes in place to identify and monitor risks?

Processes in place to identify and monitor risks to SG compliance are partly effective. SG risks are included in enterprise and business line risk assessments, however the ATO does not assess risk to revenue, which leads to a lower than merited risk rating. The mechanisms for escalating risks identified by the business line risk committee are yet to be fully developed. The ATO assesses its controls for SG compliance risk as 'partially effective'.

2.2 To determine whether there are effective processes in place to identify and monitor SG risks, the ANAO examined consideration of SG risk by governance bodies, assessment of SG risks and treatment of SG risks.

### Risk governance bodies' consideration of SG risk

2.3 The relevant ATO risk governance bodies are, at the enterprise level, the Audit and Risk Committee and the Enterprise Risk Management Committee. There is also a Risk and Data Committee within the ATO's Superannuation and Employer Obligations Business Service Line.

#### *Audit and Risk Committee*

2.4 The responsibilities of the Audit and Risk Committee include providing advice to the Commissioner of Taxation (the Commissioner) on the ATO's system of risk oversight and management. The Audit and Risk Committee's Charter states:

The committee will review and provide advice on the appropriateness of the ATO's: enterprise risk management framework and the necessary internal controls for the effective identification and

management of the ATO's risks, in keeping with the Commonwealth Risk Management Policy; approach to managing their key risks, including those associated with individual projects and program implementation and activities.

2.5 The Audit and Risk Committee receives quarterly performance reports containing operational information about SG compliance activities, including rates of finalisation of employee notifications<sup>28</sup> and the steps taken to clear backlogs of employee notifications. Since 2017 the Audit and Risk Committee has neither received nor requested strategic-level reports on the management of SG risks or compliance. Strategic-level reports would include, for example, compliance strategies, risk tolerances and the effectiveness of risk treatments in increasing compliance and reducing the SG gap.

### *Enterprise Risk Management Committee*

2.6 In November 2017 the ATO established the Enterprise Risk Management Committee to ensure that the Enterprise Risk Management Framework was in place and embedded into day-to-day practices. According to its charter, the purpose of the Enterprise Risk Management Committee is:

To improve the ATO's ability to manage risk associated with achieving the strategic objectives that enable the ATO to fully carry out its purpose to contribute to the economic and social wellbeing of Australians by fostering willing participation in the tax and superannuation systems.

2.7 The Enterprise Risk Management Committee is responsible for the review of the ATO risk appetite statement and its risk management plans, and the effectiveness of the Enterprise Risk Management Framework. Its governance roles include escalating significant risks to the ATO Executive Committee and providing regular advice and assurance about the Enterprise Risk Management Framework to the Audit and Risk Committee.

2.8 The Enterprise Risk Management Committee is chaired by the Chief Operating Officer, with a member drawn from each of the ATO's five groups: Enterprise Strategy and Corporate Operations, Law Design and Practice, Enterprise Solutions and Technology, Service Delivery, and Client Engagement. The Client Engagement Group includes the Superannuation and Employer Obligations Business Service Line, which is responsible for SG compliance.

2.9 In early to mid-2021, the Enterprise Risk Management Committee identified an agreed set of 12 priority risks to include in the Enterprise Risk Register, which were accepted by the ATO Executive and included in the ATO Corporate Plan 2021–22. The ATO advised the ANAO that the 12 risks are the Enterprise Risk Management Committee's primary focus. The Corporate Plan risk relevant to superannuation is:

R5 Managing a complex superannuation ecosystem.

Our ability to manage the superannuation ecosystem may be impacted by increasing complexity and heightened stakeholder expectations.

2.10 The ATO's priority risks were formulated during the same period in which it played a significant role in the Australian Government's response to the coronavirus disease 2019 (COVID-19) pandemic. During that time, the ATO reallocated resources to implement the Australian

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28 Employee notifications are complaints submitted by employees to the ATO about unpaid SG.

Government's economic response to the COVID-19 pandemic, including the JobKeeper Payment. The March 2021 Enterprise Risk Management Committee minutes noted that:

The ATO did an excellent job delivering the stimulus measures, shifting our focus was a strategic risk we decided to take on, however our [Quarter 2] report shows that other areas have been impacted and two of our strategic initiatives are now at risk, and some BAU activities are starting to slip beyond recovery (e.g. Super Guarantee).

2.11 Between April and December 2021, the Enterprise Risk Management Committee did not discuss any actions to be taken in light of this concern about SG. The Enterprise Risk Management Committee papers noted that:

We currently rely on an alert being raised to know when something is out of tolerance (e.g. ABRs), performance reports and internal audits. There is no structured way of bringing that picture together.

2.12 The ATO advised the ANAO that, as an operational performance matter: the Enterprise Risk Management Committee's focus was on enterprise risk management; SG was being appropriately overseen by the ATO Executive Committee; and further work was being undertaken to establish clearer mechanisms for escalation of operational risks where appropriate.

2.13 Although an SG risk appears in the Enterprise Risk Register, the ATO advised the ANAO that SG risks have not been specifically discussed at the Enterprise Risk Management Committee and that SG risks are considered a business-level risk, with all governance occurring through the Superannuation and Employer Obligation Business Service Line's Risk and Data Committee.

### *Risk and Data Committee*

2.14 The Superannuation and Employer Obligation Business Service Line has day-to-day responsibility for SG administration, including the management of risk. The Risk and Data Committee reports to the Superannuation and Employer Obligation Business Service Line Executive on SG risks and compliance performance against service standards, identifies key intelligence needs<sup>29</sup> for managing SG risks, and develops annual risk treatment plans for consideration by the Executive.

2.15 Of the three relevant risk governance bodies, the Risk and Data Committee considers SG risks in detail.

### **Assessment of SG risks**

2.16 The ANAO examined the Enterprise Risk Register of 1 October 2021, which included 82 active operational risks, four of which related to SG (Table 2.1).

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29 Key intelligence needs were initially identified in May 2019 to inform strategy and decision-making at strategic, tactical and operational levels. There are two types — data to monitor and understand the system in operation (for example, population demographics and characteristics); and analysis to inform decisions on a point-in-time basis (for example, employer non-compliance behaviours).

**Table 2.1: SG-related risks from ATO Enterprise Risk Register, October 2021**

Date added	Risk	Consequences	Controls	Consequence	Likelihood	Risk level	Within tolerance
1 February 2019	Individuals do not receive their superannuation entitlements	Growth of unclaimed superannuation	Partially Effective	2 — Medium	5 — Almost certain	Significant	Yes
26 February 2019	Failure of the ATO to respond to the impacts of illegal phoenix activity in the tax and superannuation system <sup>a</sup>	Illegal phoenix activity has the potential to severely erode the revenue base	Partially Effective	3 — Major	4 — Likely	High	No
16 June 2021	Employers fail to report and pay their SG contributions correctly and then fail to lodge and pay the resulting SG charge	Loss of community confidence in ATO administration of superannuation, additional age pension and income support claims, employees do not receive their full superannuation entitlements, employers identified as non-payers face significant penalties putting stress on their cash flow. Some employers may end up with large debts due to the relatively punitive nature of the Superannuation Guarantee Charge, resulting in threats to business viability and recovery of employee entitlements.	Partially Effective	3 — Major	3 — Even Chance	Significant	No
16 June 2021	Workers classified as contractors rather than employees	Employees do not receive SG	Partially Effective	3 — Major	1 — Rare	Moderate	Yes

Note a: The ATO describes phoenix activity as 'when a company is liquidated, wound up or abandoned to avoid paying its debts. A new company is then started to continue the same business activities without the debt. When this happens, employees miss out on wages, superannuation and entitlements; other businesses are put at a competitive disadvantage; suppliers or sub-contractors are left unpaid; the community misses out on revenue that could have contributed to community services.' Australian Taxation Office, *Illegal phoenix activity* [Internet], available from <https://www.ato.gov.au/general/the-fight-against-tax-crime/our-focus/illegal-phoenix-activity> [accessed 26 October 2021].

Source: ANAO analysis of ATO documentation.

2.17 Enterprise Risk Register risks are rated according to estimated likelihood and consequence (Figure 2.1).

**Figure 2.1: ATO risk assessment matrix, July 2021**

Consequence	Extreme	High	High	Severe	Severe	Catastrophic
	Very High	Significant	Significant	High	Severe	Severe
	Major	Moderate	Significant	Significant	High	High
	Medium	Low	Moderate	Significant	Significant	Significant
	Insignificant	Low	Low	Moderate	Moderate	Moderate
		Rare	Unlikely	Even Chance	Likely	Almost Certain
		Likelihood				

Source: ATO.

2.18 The most relevant SG risk for this audit is the third risk in Table 2.1: that employers fail to report and pay their SG contributions correctly and then fail to lodge and pay the resulting Superannuation Guarantee Charge (see Table 1.1). The first risk, that individuals do not receive their superannuation entitlements, is discussed in Chapter 3. The second and fourth risks, failure of the ATO to respond to the impacts of illegal phoenix activity and workers classified as contractors rather than employees, were outside the scope of this audit.

2.19 Risk controls for the third risk were assessed as ‘partially effective’. A July 2021 risk assessment stated that:

[Superannuation Guarantee Charge] penalties in the past have been remitted in full and therefore [have not led] to long term behaviour change ... only 60% of [Superannuation Guarantee Charge] debt is recovered ... less than 2% of [Superannuation Guarantee Charge assessments] are lodged on time.<sup>30</sup>

2.20 On the ATO’s six-level risk assessment matrix, the risk that employers fail to report and pay their SG contributions correctly and then fail to lodge and pay the resulting Superannuation Guarantee Charge, is rated ‘significant’ based on an ‘even chance’ likelihood and ‘major’ consequence.

- Likelihood was assessed as ‘even chance’ on the basis that:  
There is a reasonable probability that the risk could occur ... From 40 to 60% of the risk population could be involved in the risk. Compliance activity shows the ATO receives and investigates on

30 Table 3.10 shows the SGC collected in 2019–20 represented 65 per cent of the SGC raised in that year. This was a result of the SG Amnesty. Results from other years suggest that a 50 per cent collection ratio is more typical.



average approximately 25,000 employee notifications per annum. From this, approximately 50% of employers are investigated and 75% of these employers are found to owe money.<sup>31</sup>

- The ATO rated the consequence of the risk as ‘major’ taking into account compliance behaviour, the impact on ATO staffing, the likely view of external scrutineers including the Parliament and the reputation of the ATO.

2.21 In assigning the consequence rating, the ATO did not take into account the \$2.5 billion revenue at risk represented by the net SG gap (2018–19 estimate) (see Figure 1.1).<sup>32</sup> The revenue at risk amounts to about 0.5 per cent of ATO net revenue collections (which were \$426 billion in 2018–19).<sup>33</sup> The ATO risk matrix indicates that a ‘very high’ consequence rather than a ‘major’ consequence should be assigned to revenue at risk that is between 0.2 per cent to 2 per cent of net revenue collections. At the same likelihood level (even chance) this should result in an overall risk rating of ‘high’ rather than ‘significant’ for the risk of employers failing to report and pay their SG contributions correctly.

2.22 Even with a ‘significant’ risk rating, the risk was considered to be outside its tolerance levels.<sup>34</sup> Additional controls were identified in June 2021, including proactive risk treatments using real-time data, engaging with third-party intermediaries to influence employer behaviour and addressing deliberate and egregious non-compliance behaviour.

2.23 Of the other three SG risks in Table 2.1, the ATO also considers the risk posed by phoenix employers (the second risk) to be out of tolerance. The risks of individuals not receiving their superannuation entitlements (leading to the growth of unclaimed superannuation) and workers being classified as contractors rather than employees were determined to be within tolerance.

## Treatment of SG risks

2.24 The Superannuation and Employer Obligations Business Service Line last updated its SG Risk Treatment Plan in September 2021, describing the SG risk as:

Employers fail to correctly report and pay their SG contributions on time or at all and subsequently fail to lodge a [Superannuation Guarantee Charge] statement and pay the [Superannuation Guarantee Charge] to the ATO, leading to employees not receiving their entitlements, impacting on the integrity of the superannuation system.

2.25 In the Risk Treatment Plan, the SG risk was described as outside the risk tolerance of ‘moderate’ for this risk, which is documented in a ‘risk rationale’ paper. This was based on a net SG gap of four per cent for 2017–18.

2.26 The overall objective of the SG Risk Treatment Plan is to reduce the rate of non-compliance in the population to within a tolerable range of 97 per cent of SG being paid (that is, the net SG gap being three per cent or less). The objective is underpinned by the following principles:

- prevention before correction, as this yields a better return on investment;

31 The ATO advised the ANAO that by early 2022 it expects that 15 per cent of employee notifications will result in an audit, with 85 per cent expected to be managed through ‘light-touch’ actions.

32 The ATO advised the ANAO that ATO usage of the term ‘revenue at risk’ (or ‘revenue foregone’) would also include an estimate of interest and administration fees.

33 ATO, *Commissioner of Taxation Annual Report 2019–20*, p. 202.

34 The ATO determines its tolerance levels with reference to the proportion of SG paid, the timeliness of SG payments to funds, the number of employee notifications received and the level of SGC debt on hand.

- if employers make an honest mistake, the ATO will give them tools to self-correct; and
- the ATO encourages employers to negotiate a payment arrangement early if they are unable to pay by the due date.

2.27 The September 2021 SG Risk Treatment Plan shows a number of compliance activities (Table 2.2). It indicates that the majority of full-time equivalent (FTE) staff involved in SG compliance activity (of which there were 220) were involved in complaints-based (reactive) compliance activity. More specifically, 90 per cent were responding to employee notifications. Employee notifications were estimated to account for 91 per cent of the SG liabilities raised. Thirteen of the 220 SG compliance staff resources (six per cent) were involved in ATO-initiated (proactive) compliance activity. Overall, staff resources allocated to SG compliance decreased from 266 in 2019 to 220 in 2021.

**Table 2.2: SG Risk Treatment Plan compliance activities, September 2021**

Compliance activity type	Work program	Number of planned actions for 2021–22	Estimated liabilities to be raised (\$million)	Full-time equivalent staff to be deployed
Reactive	Employee notifications	13,728	662.4	197.5
	Large employer disclosures <sup>a</sup>	100	4.2	1
	Education Direction <sup>b</sup>	2700	N/A	1.2
	Implement new choice requirements for stapled funds <sup>c</sup>	800,000 letters 6000 emails 6000 phone calls	unknown	7.5
Proactive	Audit from third party referral	50	2.1	0.5
	Reminders to late lodgers/payers	40,000 emails 24,000 letters 500 phone calls	N/A	0.25
	Under-payers	4000 letters 1320 audits	55.5	12
	Pilot — Cafés and Fast-Food Restaurants	500 phone calls	0.05	0.25
<b>Total</b>			<b>724.3</b>	<b>220.2</b>

Note a: Disclosures relating to large employers are handled by a dedicated team of ATO auditors.

Note b: Education Directions are a new power available to the ATO to ensure that employers understand their obligations; see Table 3.8. If the ATO detects employer non-compliance as a result of lack of understanding of obligations, a direction can be issued, requiring them to complete an SG course of education.

Note c: If an employee does not execute the option to choose a super fund the default option was for the employer to determine the super fund. Legislation prescribed that, from 1 November 2021, an individual employee's super accounts would be linked, or 'stapled', so that new super accounts would not be opened each time an employee starts a new job.

Source: ATO data and documentation.

2.28 Table 2.3 shows the ATO's evaluation of the effectiveness of controls, which were documented in the 'risk rationale' paper. The overall rating of the controls was 'partially effective'.

**Table 2.3: ATO assessment of risk control effectiveness, September 2021**

Control description	Effectiveness
Preventative (nudges) <sup>a</sup>	Effective
Data-matching (Single Touch Payroll and Member Account Transaction Service)	Ineffective
Third-party referrals	Partially effective
Risk based models — High Risk Employer (HRE), Stratified Sampling Nearest Neighbour (NN) (see paragraph 2.45)	Partially effective
Employee notifications <sup>b</sup>	Effective
Proactive compliance activities <sup>b</sup>	Effective
Superannuation Guarantee Charge penalties <sup>c</sup> and payment plans <sup>d</sup>	Partially effective
Help and educate	Partially effective
Post-Amnesty disqualification and penalties, Education Direction and disclosures	Insufficient evidence
Enabling services to make it easier to comply: <ul style="list-style-type: none"> <li>• Small Business Superannuation Clearing House and SuperStream</li> <li>• Single Touch Payroll</li> <li>• Online tools</li> <li>• Electronic lodgment of Superannuation Guarantee Charge statements<sup>e</sup></li> </ul>	Effective Partially effective Partially effective Partially effective
Firmer action for debt recovery	Insufficient evidence

Note a: Nudges are used to remind employers of upcoming SG due dates or to prompt lodgment of Superannuation Guarantee Charge statements where SG is unpaid or paid late.

Note b: The 'risk rationale' paper noted employee notifications and proactive compliance activities (such as audits and reviews) to be labour intensive and not timely.

Note c: The 'risk rationale' paper noted that, pre-Amnesty, most penalties were remitted in full.

Note d: The 'risk rationale' paper stated that: 'Data indicates only 60% of Superannuation Guarantee Charge debt is ever recovered.'

Note e: The 'risk rationale' paper stated that: 'Less than two per cent of SG statements are lodged on time.'

Source: ANAO analysis of ATO 'risk rationale' paper, 19 September 2021.

2.29 The ATO assessed Key Intelligence Needs (KINs) in 2019 as a primary component of the risk identification process. The KINs identify the data required to support the SG Risk Treatment Plan and the data analysis required to support SG compliance actions.<sup>35</sup> A total of 79 KINs were identified in May 2019; 60 more were added in August 2019; and a further 30 in November 2019. The KINs relate to a range of ATO responsibilities including SG, Fringe Benefits Tax and Pay As You Go obligations.

2.30 A stocktake of KINs was undertaken in May 2020 and reported to the Superannuation and Employer Obligations Business Service Line Executive in July 2020. In respect of KINs in support of SG compliance, it was reported that:

35 KINs include population demographics, characteristics and interactions in the system and transactional flows, non-compliance behaviours (characteristics, drivers and causes), emerging risks (patterns and trends) and engagement (patterns and channels for client experience).

- the data model for identifying discrepancies between Single Touch Payroll, reported SG liability and Member Account Transaction Service-reported payments was not yet mature and at an appropriate level of confidence;
- it was difficult to reliably match SG payments with Member Account Transaction Service transactions;
- to help manage SG risk, a synthetic data model was derived (dMATs) to plug gaps in the Member Account Transaction Service data;
- the very large data sets produced were being analysed in Microsoft Excel in multiple spreadsheets with millions of rows; and
- significant time was required to process the data.

2.31 The Superannuation and Employer Obligations Business Service Line Executive was advised that, because of these difficulties, SG compliance targeting continued to rely primarily on employee notifications.

### Has the ATO implemented a risk-based compliance strategy?

The ATO has partly implemented a risk-based compliance strategy. There is a compliance strategy that is designed to shift the focus from a reactive approach through enforcement, to a preventative approach through encouraging voluntary compliance. The compliance strategy has not been fully implemented, and compliance activities remain largely reactive. A preventative approach is highly dependent on the implementation of a data-matching solution. The use of real-time data-driven analysis to inform risk assessment has been limited by data and systems issues.

2.32 Regulators should apply an appropriate risk-based approach for selecting entities for compliance action.<sup>36</sup> To assess whether the ATO has implemented a risk-based compliance strategy, the ANAO examined whether it:

- has a compliance strategy;
- has used analysis to select entities for compliance activity;
- targets high-risk industries and groups through its compliance activities; and
- engages with external stakeholders to improve its understanding of compliance risks.

### Compliance strategy

2.33 The most recent compliance strategy was presented by the Deputy Commissioner, Superannuation and Employer Obligations Business Service Line, to the ATO Executive in July 2020.<sup>37</sup>

2.34 The ATO's SG compliance activities comprise reactive activities responding to employee notifications and proactive activities that involve targeting employers for audit or other compliance

36 ANAO, *Audit Insights: Administering Regulation* [Internet], January 2021, available from <https://www.anao.gov.au/work/audit-insights/administering-regulation>.

37 The ATO introduced a Practical Compliance approach in June 2015 as part of an expansion of the Tailoring the Employer Experience with Superannuation initiative (see paragraph 2.40). The ATO was unable to provide to the ANAO an approved version of the 2015 compliance approach.

activities. The July 2020 strategy made a strategic shift from reactive corrective compliance actions to reduce the net SG gap to preventative and proactive actions to increase voluntary compliance and reduce the gross SG gap.

...making a progressive move from a reactive complaints-based approach towards a more pre-emptive, lodgement based approach where employers clearly understand their obligations and system improvements are made to make it easier for employers to comply.

2.35 A preventative approach guides employers in a more timely and less resource-intensive way towards voluntary compliance through the use of low-touch communications with employers (letters, emails and phone calls). These are aimed at encouraging employers to self-correct through the lodgement of SG Statements (see Figure 1.1).

### **Use of analysis to select entities for compliance activity**

2.36 The July 2020 compliance strategy stated that the implementation of a preventative strategy is highly dependent on the capacity of the ATO to implement a data-matching solution:

...the ability to undertake this work on a large scale is dependent on the availability and quality of [Single Touch Payroll] and [Member Account Transaction Service] data as well as analytical models.

2.37 The ATO has applied data analysis to identify high-risk employers for proactive activities since 2008.

2.38 In response to a June 2015 Auditor-General recommendation that the ATO better analyse the level and nature of SG non-compliance,<sup>38</sup> the ATO advised that it was commencing work to measure the SG gap, assessing systemic risks with employer non-compliance and exploring opportunities to pilot collaborative approaches with superannuation industry compliance bodies.

2.39 Since 2015 there have been three major phases in the ATO's use of analysis in risk-based SG compliance activities: practical compliance, data-driven risk-based compliance activities and real-time data-driven compliance activities.

#### ***Practical compliance***

2.40 The June 2015 Tailoring the Employer Experience with Superannuation project involved the application of a 'practical compliance' approach. Practical compliance meant tailoring compliance action to correspond to employers' behaviour and taking a 'light touch' approach when the ATO formed the view that the employer had substantially complied with their SG obligations. A more punitive approach was reserved for employers who had intentionally disregarded their SG obligations.

2.41 Internal ATO documents from April 2017 indicate that substantial compliance included: unintentional failure; as well as cases where, on becoming aware of their failure, employers paid the minimum SG contribution owed (plus an amount of 'top-up interest' to compensate employees

38 Auditor-General Report No.39 2014–15, *Promoting Compliance with Superannuation Guarantee Obligations*, p. 63. The Auditor-General recommendation was:

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.

for lost earnings) and notified the ATO of their failure and the remedial actions they had taken. The documents indicated that, in such cases, the Commissioner:

will not pursue the lodgement of an SG statement, will not raise a [Superannuation Guarantee Charge] debt on the employer's ATO accounts, will not exercise his power under section 36 of the [Superannuation Guarantee (Administration) Act 1992] to issue a default assessment, and will remit Part 7 penalties to nil (and as such, will not make an assessment of the Part 7 penalties).

2.42 On 18 June 2015 the ATO published corresponding advice to employers on its website:

While the law requires employers to lodge an [Superannuation Guarantee Charge] statement, if they do not make the required amount of super contributions to a super fund by the end of the contribution cut-off date, we may not check the current compliance of those employers who are viewed as low risk (as a result of having a good compliance history) and who have appropriately compensated their employees.

2.43 The ATO applied the practical compliance approach from mid-2015 to August 2017, at which time it was discontinued on the basis of legal advice prompted by concerns raised by a Deputy Commissioner. The ATO formed the view that it was not clear that the concessional treatment of employers was supported by the SG legislation and that the practical compliance approach could not be utilised where the ATO was made aware of the factual circumstances of a particular case and that an entity had not complied with their SG obligations.

#### *Data-driven risk-based SG compliance activities*

2.44 By October 2016 there was increased analysis of SG non-compliance through the use of data and predictive analytics. This included the analysis of ATO payment summaries and the Member Contribution Statements of superannuation funds. This analysis identified that the highest-risk employers were those with fewer than 20 employees in industries where the cash economy operated.

2.45 By the end of 2017 the ATO had developed two risk-based models to identify employers with a high risk of not paying SG entitlements: the High Risk Employer model and the Stratified Sampling Nearest Neighbour model. Both models relied on historical superannuation fund and income tax return data.

- High Risk Employer model — compared the amount of SG paid to an employee (as detailed in Member Contribution Statements) to an estimate of the SG entitlement calculated using the employee's income tax return. The output of the model was the likelihood of an employee having received their SG entitlement. The ATO targeted employers for audit where the High Risk Employer model indicated that a significant proportion of their employees were unlikely to have received their SG entitlements.
- Stratified Sampling Nearest Neighbour model — used an established statistical method to create notional 'peer' employers for comparison with a target employer. The peer employers have the same number of employees overall and in each occupation, and have employees with similar salary and wages. The output of the model was a risk score and an estimated SG shortfall for the targeted employer. These outputs were used to select targets for audit and other actions.

### *Real-time data-driven risk-based compliance activities*

2.46 In October 2018 the Risk and Data Committee approved an SG Risk Treatment Plan that aimed to ‘move from a reactive, largely historical perspective on SG compliance to a more proactive, contemporary focus’. This would involve moving from risk models based on retrospective data received annually toward risk targeting based on real-time data, noting that there would be an extended transition period. During that time, data would progressively become available, with the extension of Single Touch Payroll to all employers from July 2019, and as Member Contribution Statements were replaced by more regular reporting from superannuation funds through the Member Account Attribute Service<sup>39</sup> and Member Account Transaction Service from April 2019.

2.47 The transition period would be used to:

- develop tools to identify risk associated with employers not in the Single Touch Payroll/Pay As You Go Withholding reporting system; and
- establish a facility to bring together a wider range of available data to aid the development of SG risk assessment.

2.48 The first real-time data-driven SG compliance tools were to become operational in 2018–19. These comprised payday ‘health checks’ of the completeness and integrity of payday reporting including SG calculations and quarterly diagnostic reports comparing Member Account Transaction Service data with reported SG obligations. Exceptions or discrepancies identified could then prompt ATO compliance action.

2.49 In 2018–19 the ATO replaced the High Risk Employer and Stratified Sampling Nearest Neighbour models with real-time data models.

- Employer Simulation and Evaluation Model — compares employers’ behaviour by looking at similar groups of employees. The model initially used Member Contribution Statements data as the source of contributions made, but was subsequently updated to use Member Account Transaction Service data.
- SG Under Reporting model — identifies under-reporting using Single Touch Payroll and Member Account Transaction Service data.

2.50 SG ‘strike rate’ refers to the proportion of SG compliance cases that have liabilities raised. The new models increased the average strike rate from approximately 60–70 per cent to 90 per cent. However, the new models require a high level of data validation, involve limited sampled data sets and compliance cases, are manually intensive, and require intensive use of Microsoft Excel by a few experienced staff.

2.51 The ATO advised the ANAO that the complexity, volume of employer population data from which samples are drawn, and difficulties in matching the Single Touch Payroll and Member Account Transaction Service / Member Account Attribute Service data sets at scale had been underestimated. The ATO stated that the employer reporting requirements (and resulting data) were established for multiple purposes aside from SG compliance and at different points in time. Before the data sets could be used to identify SG compliance risks and targets, a reconciliation of the data reporting is required to facilitate matching. This involves accounting for differences in frequency, time periods and business reporting; dealing with duplicate and missing data; and

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<sup>39</sup> Member Account Attribute Service is an online ATO service for superannuation providers.

removing data-entry errors (chiefly made by employers and superannuation funds). The ATO estimated that data integrity issues affected 10 to 15 per cent of the data.

2.52 In July 2020 the Superannuation and Employer Obligations Business Service Line reported to the ATO Executive that the ATO was receiving greater numbers of employee notifications and a backlog was growing, due in part to the reallocation of 80 per cent of staff for around six months to deliver the Australian Government's economic response to the COVID-19 pandemic (see paragraph 3.28). The Superannuation and Employer Obligations Business Service Line also reported that the SG Amnesty (see paragraphs 3.44 to 3.58) would end in September 2020 and it was desirable that compliance action resume promptly utilising real-time data.

2.53 The development of the data-matching solution is heavily reliant on the available capacity of the Smarter Data team.<sup>40</sup> Minutes from an August 2021 Risk and Data Committee meeting stated that Smarter Data's work program was at capacity.

2.54 The ATO's progress in undertaking Single Touch Payroll and Member Account Transaction Service data-matching was reviewed and future requirements identified as part of a 'discovery and opportunity' Superannuation and Employer Obligations project from September 2020 until August 2021 (later renamed the SG Assurance Project).<sup>41</sup> The Superannuation and Employer Obligations Business Service Line and Smarter Data and Enterprise Solutions and Technology divisions each allocated two to three full-time equivalent staff to the project. A proposal for resolution of the Single Touch Payroll and Member Account Transaction Service data-matching issues was approved to proceed to a value case in August 2021.

2.55 The ATO advised the ANAO in September 2021 that it was making limited use of real-time data to select cases for compliance activities, amounting to around 200 cases in 2021–22, but with the intention to increase over time to 1000 cases per year. The ATO advised the ANAO that analysis and resolution of fundamental differences between the data in Single Touch Payroll and Member Account Transaction Service for SG compliance was feasible and fundamental to achieving an efficient solution to deliver the design. The September 2021 Risk Treatment Plan for SG non-compliance noted that:

The treatment plan, particularly proactive and tailored risk treatment, relies heavily on the ability to reliably match [Single Touch Payroll] and [Member Account Transaction Service] data at an employee/employer level and store that result in an enterprise system. The current state of our models and systems does not allow this to happen. The underlying causes and potential investment pathways have been identified as part of the SG Assurance Project and are pending funding approval.

2.56 In December 2021 the ATO Executive decided to continue the SG Data Assurance project at a slower pace due to the ATO's budget position.

## **Targeting of high-risk industries and groups**

2.57 The ATO's SG compliance approach is based on the selection of cases where the greatest debt can be recovered and there is a greater likelihood of a higher strike rate (that is, the proportion

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40 The ATO's Smarter Data unit conducts data analytics and works on improved data processing.

41 Following a decision at the ATO's Strategy and Integration Committee, ongoing work was designated as the 'SG Assurance Project'.

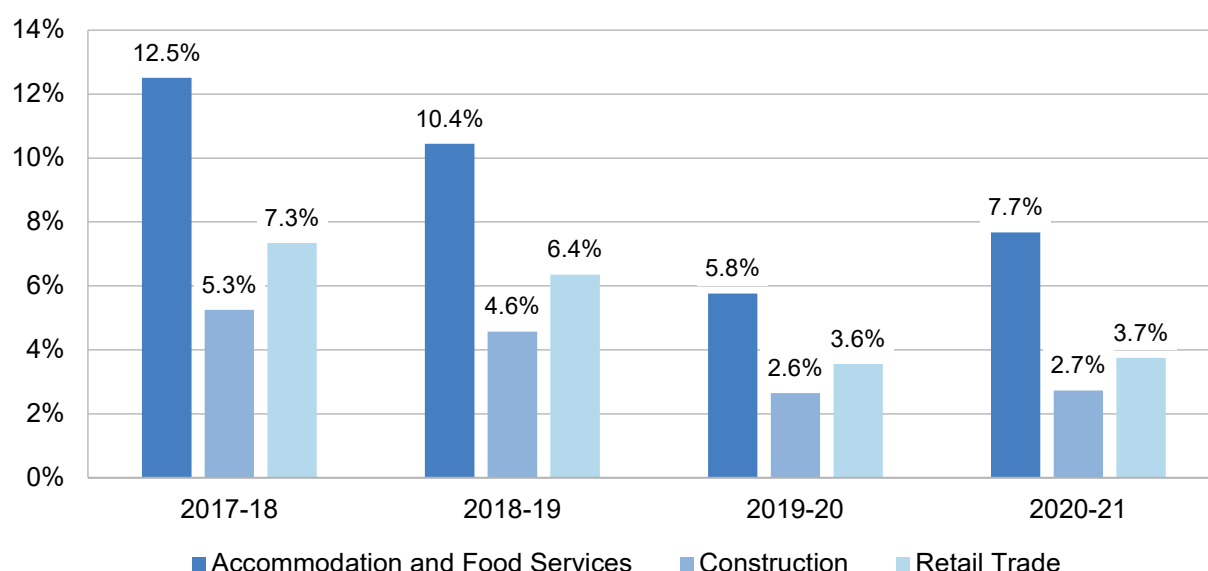


of cases created that identify unpaid SG and raise a liability). The ATO does not specifically target higher-risk industry sectors.

2.58 The ATO's analysis of ATO and third-party data confirms that non-compliance is unevenly spread across employers, with prevalence greater for small and micro businesses and certain industries. Ninety two per cent of businesses audited by the ATO were entities with turnover under \$10 million, 78 per cent had 30 or fewer employees and 44 per cent had 10 or fewer employees. In 2016 the ATO began to develop a high-risk industry strategy that would operate across its business lines. Three industries (cafés and restaurants, hairdressing and beauty services, and investigation and security services) were flagged for further consideration. The strategy was not pursued.

2.59 The ANAO analysed the number of employee notifications, the number of SG proactive audits and reviews, and the ATO's engagement with employers between 2017–18 and 2020–21 in the top high-risk industries (as assessed by the ATO in 2018–19) (Figure 2.2). Collectively, these industries accounted for about 25 per cent of all SG compliance activity in 2017–18. The proportion of SG compliance activity accounted for by these industries declined to around 14 per cent in 2020–21.

**Figure 2.2: Proportion of SG compliance activity represented by the ATO-identified top three high-risk industries, 2017–18 to 2020–21**



Note a: Data for 2018–19, 2019–20 and 2020–21 includes SG Taskforce outcomes.

Source: ATO data. The ANAO has not validated this data.

2.60 Although high-risk industries are covered by the ATO's compliance activities, the total number of employers engaged is low as a proportion of all employers. Between 2017–18 and 2020–21, compliance activities (excluding preventative measures such as nudges) for employers in the construction industry covered between 0.01 and 0.002 per cent of construction industry employers, depending on the year.

2.61 As at June 2021 the ATO was planning a pilot SG compliance effort targeting the café and fast food industry. About 500 employers would be identified using existing data analytic tools, and the outcome would be considered for further targeted compliance efforts. The pilot was scheduled

to commence in March 2022. The ATO advised the ANAO on 24 February 2022 that the pilot would be finalised by the end of April 2022.

2.62 The ATO's top-down approach to calculating the SG gap (see Box 1) does not provide risk intelligence by market segment or industry sector. A bottom-up approach using tax and superannuation data at the individual employer and employee level has the potential to provide this information. The ATO advised the ANAO that it may be possible to calculate a bottom-up SG gap using Single Touch Payroll data in future,<sup>42</sup> with the publication of a bottom-up estimate possible in the 2023–24 Annual Report.

## Engagement with external stakeholders

2.63 The ATO's consultative arrangements for discussing superannuation matters with external stakeholders<sup>43</sup> comprise forums that discuss major policy, administrative and implementation issues; special projects; and information-sharing. There are currently no external stakeholder forums that have a specific focus on SG non-compliance. There is scope for the ATO to improve the overall effectiveness of its SG compliance activity by working more effectively with external stakeholders, noting that the ATO cannot share information with other organisations unless they meet a legislative exemption, such as established for the Fair Work Ombudsman and interagency taskforces.<sup>44</sup>

### Recommendation no. 1

2.64 The ATO implement the proposed preventative approach to SG compliance as documented in the risk-based compliance strategy.

**Australian Taxation Office response:** *Agreed.*

2.65 *The ATO is undertaking a risk-based approach to managing the SG risk and will implement a range of approaches, including preventative approaches, which have already commenced.*

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42 Single Touch Payroll data can allow for a breakdown of employees' income to provide greater visibility of the components included in Ordinary Time Earnings and therefore subject to SG. For example, it will distinguish superannuation salary sacrifice payments from non-superannuation salary sacrifice payments.

43 External stakeholders include superannuation funds, other government agencies, joint government taskforces, unions and the general public.

44 The ATO advised the ANAO that while the ATO and Fair Work Ombudsman have a memorandum of understanding in place to facilitate information sharing, legislation restricts the ATO from sharing information in relation to clients and referral outcomes.

### 3. Effectiveness of compliance activities

#### Areas examined

This chapter examines whether the Australian Taxation Office's (ATO's) compliance activities are effective in achieving greater employer compliance with superannuation guarantee (SG) obligations.

#### Conclusion

The ATO's compliance activities are partly effective in achieving greater employer compliance with SG obligations. The extent of improvement in employer compliance is difficult to establish due to a lack of performance information. Although there has been an increase in the absolute amount of debt raised and funds collected, the ATO has acknowledged that it has a small influence on the net SG gap. Planned targeted reforms to improve the integrity and administration of the SG system were partly implemented. Although the ATO did not fully employ its SG debt-recovery powers during 2020, in line with its suspension of other ATO-initiated compliance work during the COVID-19 pandemic, SG debt increased at a higher rate than total ATO debt in 2020–21.

#### Areas for improvement

The ANAO made two recommendations aimed at enhanced SG performance reporting and maximising the benefit to employees' superannuation funds through more effective debt recovery. To enable performance assessment, the ANAO suggested that the ATO should set clear performance targets in respect of the SG gap.

3.1 To assess the effectiveness of the ATO's compliance activities in achieving greater employer compliance with SG obligations, this chapter examines whether:

- the ATO's compliance activities improved employer compliance with SG obligations;
- the SG Taskforce and Amnesty achieved their objectives; and
- the ATO effectively used its debt recovery powers to collect unpaid SG.

#### Have the ATO's compliance activities improved employer compliance?

While there is some evidence that the ATO's compliance activities are improving employer compliance, the extent of improvement cannot be reliably assessed. Public reporting of performance does not provide adequate information to evaluate the effectiveness of the ATO's SG compliance activities. The ATO advised that a growing backlog of employee notifications of employer non-compliance was cleared by December 2021. There has been an increase in the absolute amount of debts raised and funds collected over the past four years. Although there has been a downward trend since 2013–14, the net SG gap reported for 2018–19 was little different from the gap reported for 2009–10. Between 2013–14 and 2018–19, the ATO's compliance activities detected and collected unpaid SG amounting to less than an average of 15 per cent per year of the gross SG gap. The ATO did not consistently meet service commitments for reactive corrective compliance activities. A commitment that 40 per cent of corrective compliance activities would be proactive was reported as met in three of four years to 2020–21. However, there has been a shift from resource-intensive audit activity to low-touch nudges.

3.2 To determine whether the ATO's compliance activities have improved employer compliance with SG obligations, the ANAO examined the quality of the ATO's SG performance information and the performance results.

### **Quality of ATO's Superannuation Guarantee performance information**

3.3 The Commonwealth Performance Framework requires entities to publish performance information that outlines how the entity's performance will be measured and the results of that measurement.<sup>45</sup> Regulators should report on the number and the outcomes of core compliance activities to provide confidence to the Parliament and the community that regulated entities are complying with their obligations.<sup>46</sup>

3.4 The ATO includes performance measures for the SG program in its Portfolio Budget Statements (PBS) and publishes results in its Annual Performance Statement.<sup>47</sup> Auditor-General Report No. 39 of 2014–15 recommended that the ATO develop indicators, targets and timeframes to assess whether goals were being achieved.<sup>48</sup> The ATO agreed with the recommendation. Part of the ATO's response was to develop its estimates of the SG gap (see Box 1). The performance criteria in Table 3.1 have been in place since 2019–20.

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45 ANAO, *Audit Insights: Performance Measurement and Monitoring — Developing Performance Measures and Tracking Progress* [Internet], 11 November 2020, available from <https://www.anao.gov.au/work/audit-insights/performance-measurement-and-monitoring-developing-performance-measures-and-tracking-progress>. The Commonwealth Performance Framework is defined at Department of Finance, *Commonwealth Performance Framework* [Internet], available from <https://www.finance.gov.au/government/managing-commonwealth-resources/planning-and-reporting/commonwealth-performance-framework> [accessed 2 January 2022].

46 ANAO, *Audit Insights: Administering Regulation* [Internet], January 2021, available from <https://www.anao.gov.au/work/audit-insights/administering-regulation>.

47 ATO, *Commissioner of Taxation Annual Report 2020–21*, October 2021, p. 56.

48 Auditor-General Report No. 39 2014–15, *Promoting Compliance with Superannuation Guarantee Obligations*, p. 116.

**Table 3.1: Portfolio Budget Statements SG performance measures, 2021–22**

Outcome 1 — Confidence in the administration of aspects of Australia's taxation and superannuation systems, including through helping people understand their rights and obligations, improving ease of compliance and access to benefits, and managing non-compliance with the law; and in delivering effective and efficient business registry services.			
Program 1.14 Superannuation Guarantee Scheme performance criteria	Targets		
Superannuation guarantee gap as a proportion of superannuation guarantee contributions	Reduce the gap to a level as low as practicable given the nature and complexity of the law and the resources available.		
Value of Superannuation Guarantee Charge: <ul style="list-style-type: none"> <li>raised (including penalties and interest)</li> <li>collected</li> </ul>	Financial year	Targets \$ million	
		Raised	Collected
	2020–21	1020	516
	2021–22	812	462
	2022–23	845	478
	2023–24	902	513
	2024–25	974	554
Value of superannuation guarantee entitlements distributed to individuals or superannuation funds	Financial year	Targets \$ million	
	2020–21	485	
	2021–22	421	
	2022–23	414	
	2023–24	445	
	2024–25	480	
Value of superannuation guarantee debt on hand and the amount of superannuation guarantee debt irrecoverable at law or uneconomical to pursue	Financial year	Targets \$ million	
		Debt on hand	Irrecoverable at law or uneconomical to pursue
	2020–21	2800	23
	2021–22	2700	195
	2022–23	2900	198
	2023–24	3100	203
	2024–25	3300	209

Source: Portfolio Budget Statements 2021–22, Treasury Portfolio, pp. 221–222.

### 3.5 ATO annual reports<sup>49</sup> also provide:

- the number of employee notifications leading to a superannuation liability being raised or having no result;

<sup>49</sup> ATO, *Commissioner of Taxation Annual Report 2020–21*, October 2021, Appendix 8.

- the number of employees who have had SG entitlements raised as a result of ATO compliance activities and voluntary disclosures;
- the number of employers whose records are checked and the number of checks leading to a superannuation liability being raised;
- the proportion of employers for whom SG liabilities were raised by the ATO; and
- the proportion of SG compliance casework consisting of ATO-initiated work.

3.6 The ATO's service commitments as reported in annual reports include:

- commencing processing of employee notifications within 28 days of receipt;
- finalising 60 per cent of employee notifications within four months of receipt; and
- finalising 90 per cent of employee notifications within nine months of receipt.

3.7 In addition to the publicly reported performance measures, the Superannuation and Employer Obligations Business Service Line Executive receives a monthly performance report largely focusing on the processing of employee notifications, backlog and project status.

3.8 Section 16EA of the Public Governance, Performance and Accountability Rule 2014 (PGPA Rule) requires an entity's performance measures to relate directly to one or more of the entity's purposes or key activities; and be measurable. Under subsection 16E(2) item 5 of the PGPA Rule, an entity's corporate plan should specify targets for each of those performance measures for which it is reasonably practicable to set a target.

3.9 ATO SG performance reporting could be improved in a number of ways.

- There are targets for three of four PBS SG measures. The ATO does not have measurable targets for tax gaps, including the SG gap. The ATO advised the ANAO that establishing a precise numerical target for the SG gap was not practicable due to a two-year time lag in calculating the measure and the statistical confidence interval around the estimate, but that there is an expectation that the SG gap should decrease over time. The ATO also advised that the development of a 'bottom up' SG gap measure (see paragraph 2.62) will provide a stronger basis for setting a precise numerical target. The ANAO notes that performance data sets involving a time lag are not unusual and that targets can be expressed as a range. The ATO should consider whether a target range or a target that conveys general expectations for a reduction in the gap over time would provide greater transparency than the current approach. Further, Resource Management Guide 131 states that where it is not reasonably practicable to set a target, the reasoning should be documented and reported.<sup>50</sup>
- Publication of the overall number of employee notifications received each year would provide valuable context for the other performance and service standard results that are published.
- The ATO cautions against analysing year-on-year changes to theoretical tax gap models like the SG gap and suggests that medium to longer-term trends are more meaningful indicators of the overall performance and health of the tax and superannuation systems.<sup>51</sup>

50 Department of Finance, Resource Management Guide No. 131: *Developing good performance information*, May 2020, p. 40.

51 ATO, *Commissioner of Taxation Annual Report 2020–21*, October 2021, p. 40.

Although time series of the SG gap are presented in annual reports and on the ATO website, reporting is not supported by any commentary about trends or any assessment of the overall effectiveness of the ATO's compliance activities.

- To inform an assessment of the overall effectiveness of its SG compliance activities, in addition to tracking macro-level movements in the SG gap over time, the ATO could report the percentage of the gross gap detected by the ATO and the percentage detected and collected.
- The ATO could consider micro-level measures that focus on assessing the impact of specific risk treatments on the level of employer compliance by market segment and industry sector, especially high-risk industries and employers. This approach would require developing a baseline level of employer non-compliance.
- The monthly performance report to the Superannuation and Employer Obligations Business Service Line Executive has limited analysis on the performance of the SG compliance activities.

## Recommendation no. 2

3.10 The ATO assess its performance measures against the Public Governance, Performance and Accountability Rule 2014 and enhance its public SG performance information by:

- (a) setting targets for measures, including the SG gap; and
- (b) including explanations for performance results, including performance changes over time.

**Australian Taxation Office response:** *Agreed with qualification (a); Agreed (b).*

3.11 *(a) We agree that sustainably reducing the SG gap (and therefore increasing SG performance) is our goal.*

*Consistent with the recommendation, we intend to bolster our current measurement and publication of gaps/performance by establishing and publishing our ambitions as to SG gap/performance over time. This aligns with our intended approach for gaps/performance more broadly.*

*We note that gap/performance (generally and in relation to SG) has some challenges in the context of a PGPA target, for a variety of reasons, including:*

- *It tends to be a 'lag' measure, as it takes up to several years to reliably estimate the gap for a year;*
- *It is an estimate, and there can be significant variations in calculated gap due to changes in methodologies and assumptions rather than ATO performance;*
- *Changes in policy settings can have significant effects on gap/performance.*

*We agree in part to setting targets in relation to a number of performance measures which will provide more real time information.*

3.12 *(b) The ATO will explore opportunities to improve its explanations and commentary on SG performance information.*

## Performance results

3.13 The ANAO examined performance results for the SG gap and compliance activity.

### SG gap performance

3.14 There are two SG gap estimates, the gross gap (a measure of employer compliance that estimates the difference between actual SG employer contributions and the amount that would have been paid with full employer compliance before ATO intervention) and the net gap (the gross SG gap minus SG amendments voluntarily disclosed by employers and from ATO compliance activities).<sup>52</sup>

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52 ATO, *Superannuation guarantee gap* [Internet], available from <https://www.ato.gov.au/about-ato/research-and-statistics/in-detail/tax-gap/superannuation-guarantee-gap/> [accessed 3 November 2021].

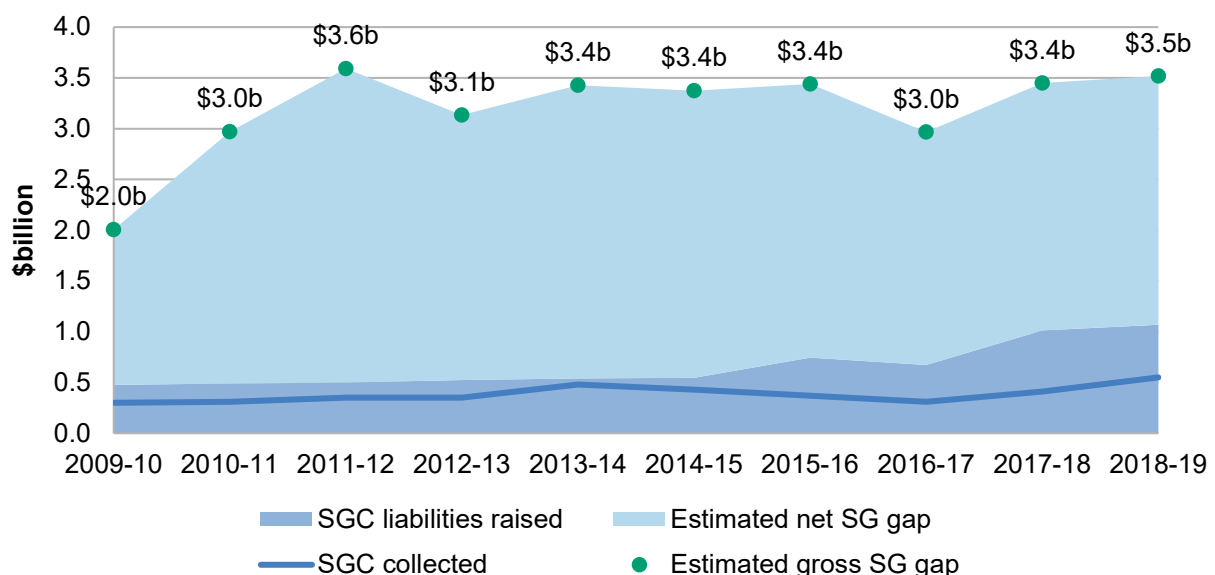


- For 2018–19 the ATO estimated a gross SG gap of 5.4 per cent or \$3.5 billion — in other words, the ATO estimates that employers were paying about 95 per cent of their SG obligations voluntarily.
- For 2018–19 the ATO estimated a net SG gap of 3.8 per cent or \$2.5 billion.

3.15 Figure 3.1 shows the absolute gross and net SG gap estimates, and SGC liabilities raised and collected, for 2009–10 to 2018–19.

- In 2018–19 \$2.5 billion of the gross gap was undetected by the ATO and \$1.1 billion was detected. The detected SG gap results from ATO compliance activities and is also referred to as ‘SGC liabilities raised’.
- Over 10 years, the proportion of unpaid SG detected by the ATO increased from 21.6 to 30.4 per cent (average 20.5 per cent) of the gross SG gap.<sup>53</sup>
- In 2018–19, \$0.55 billion of SGC liabilities was collected. Between 2013–14 and 2018–19, the ATO’s compliance activities detected and collected unpaid SG amounting to less than an average of 15 per cent per year of the gross SG gap.<sup>54</sup>
- The ATO estimates that approximately 40 per cent of the undetected SG is within the shadow economy and not readily susceptible to SG compliance activities.<sup>55</sup>

**Figure 3.1: ATO estimated gross and net SG gap, and SGC liabilities raised and collected, 2009–10 to 2018–19**



Source: ANAO presentation of ATO data. The ANAO has not validated the data.

3.16 Figure 3.2 shows that the net SG gap, as a percentage of theoretical SG, has fluctuated between around four and six per cent in the ten-year period.<sup>56</sup> The net SG gap percentage in

<sup>53</sup> Given that the gap is measured on an accrual basis, the ATO prefers the term ‘unreported SG’ to ‘unpaid SG’.

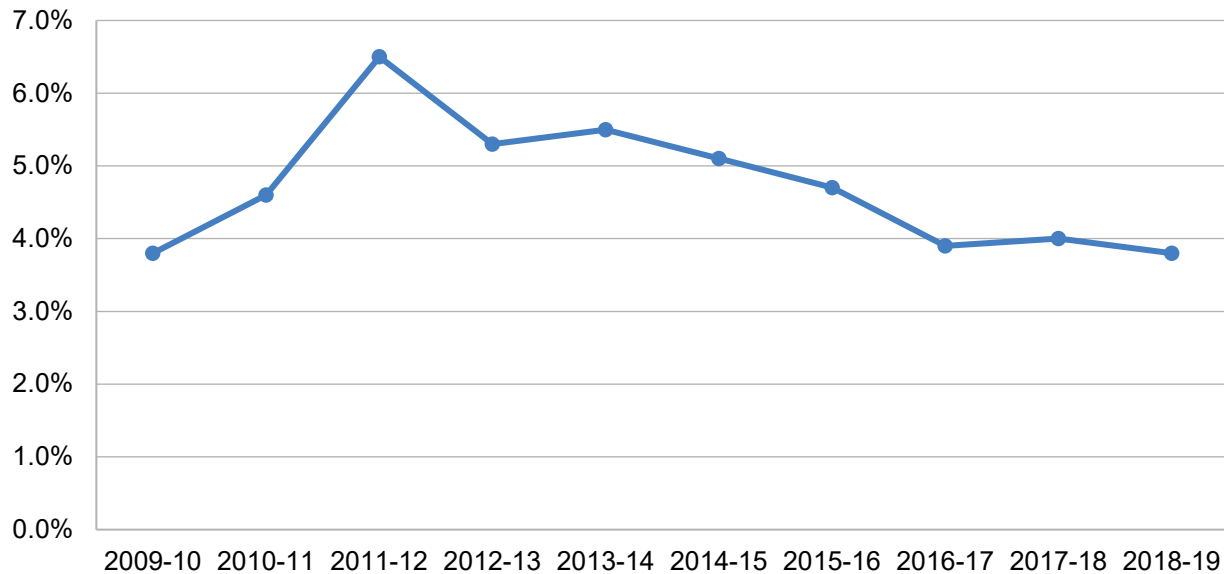
<sup>54</sup> Note that the total collected in a particular year may not have been raised in that same year; collections may arise from assessments made in previous years and may continue over several years.

<sup>55</sup> The ATO prefers the term ‘unreported SG’ to ‘undetected SG’.

<sup>56</sup> The calculation of the net gap percentage in 2018–19 is the undetected \$2.5 billion divided by the theoretical SG of \$64.94 billion.

2018–19 is the same as the gap in 2009–10 (3.8 per cent). There has been a downward trend in the gap since 2013–14.

**Figure 3.2: Net SG gap, 2009–10 to 2018–19**



Source: ATO data. The ANAO has not validated this data.

3.17 Table 3.2 shows that the amount of SGC raised was around 30 per cent of the gross SG gap in 2017–18 and 2018–19. Not all ATO compliance activities result in a Superannuation Guarantee Charge (SGC) liability being raised.<sup>57</sup> The ATO recovers 50 to 60 per cent of the liability raised. A 2020 internal strategy document stated that the ATO’s ‘primarily reactive, resource intensive compliance and debt approach has only a small influence on the net gap’.

**Table 3.2: Gross SG gap estimate and SGC outcomes, 2017–18 and 2018–19**

Measure	2017–18	2018–19
	\$ million	\$ million
Gross SG gap estimate <sup>a</sup>	3448	3520
SGC raised by the ATO <sup>b</sup>	1107	1069
SGC collected by the ATO <sup>c</sup>	441	577

Note a: The ATO publishes SG gap estimates two years in arrears. In 2021, the ATO published SG gap estimates for 2018–19.

Note b: Superannuation Guarantee Charge raised includes voluntary Superannuation Guarantee Charge lodgments.

Note c: The total collected in a particular year may not have been raised in that same year; collections may arise from assessments made in previous years and may continue over several years.

Source: ANAO analysis of ATO data. The ANAO has not validated this data.

### **Compliance activity performance**

3.18 The ATO’s two compliance strategies are preventative and corrective.<sup>58</sup> Until recently, most of the ATO’s compliance actions were corrective measures directed at reducing the net SG gap.

<sup>57</sup> SG is the employer obligation. SGC is the ATO intervention.

<sup>58</sup> This audit did not examine some ATO compliance activities, such as help and education.

Corrective activities can be reactive or proactive and include audits and reviews based on reports of unpaid SG from employees (reactive) or based on ATO-held data (proactive corrective) (Table 3.3).

**Table 3.3: ATO compliance activities**

Address gross SG gap	Address net SG gap
<i>Preventative activities<sup>a</sup></i>	<i>Corrective activities</i>
<ul style="list-style-type: none"> <li>Communications and education</li> <li>Education Direction<sup>b</sup></li> <li>Employer engagement (reminder reviews and nudges)<sup>c</sup></li> </ul>	Reactive activities:
	<ul style="list-style-type: none"> <li>Employee notification reviews and audits<sup>d</sup></li> </ul>
	Proactive activities:
	<ul style="list-style-type: none"> <li>ATO-initiated audits</li> <li>SG Taskforce audits</li> </ul>

Note a: Preventative activities are also proactive. Corrective activities can be either reactive or proactive.

Note b: Education Directions are a new power available to the ATO to ensure that employers understand their obligations; see Table 3.8.

Note c: Nudges are used to remind employers of upcoming SG due dates or to prompt lodgment of Superannuation Guarantee Charge statements where SG is unpaid or paid late.

Note d: Employees can lodge notifications with the ATO when they identify that their employer has not paid SG to their superannuation fund. ATO records indicate that most employee notifications are from employees of small business, and in the accommodation and food services, construction and retail trade industries.

Source: ANAO analysis.

3.19 The transition from corrective to preventative activities underpins the ATO's 2021 SG compliance strategy. Single Touch Payroll and Member Account Transaction Service data will support the transition to preventative activities that encourage voluntary compliance. Over time, the ATO expects that preventative activities such as nudges will reduce the number of employee notifications received and enable greater focus on proactive ATO-initiated audits of high-risk employers.<sup>59</sup> Currently the ATO does not report on the effectiveness of preventative compliance activities. However, there have been informal evaluations of pilot projects of preventative treatments.<sup>60</sup>

3.20 Between 2017–18 and 2020–21 the ATO raised \$3.2 billion from corrective compliance activities (Table 3.4), with 78 per cent from employee notification audits. The remaining 22 per cent was raised from ATO-initiated audits and reviews. Almost half of this amount was from employers who lodged an SG Statement after an audit had commenced, that is, corrected non-compliance after being notified by the ATO of scrutiny.

<sup>59</sup> The ATO counts nudges towards a 40 per cent ATO-initiated casework commitment to government.

<sup>60</sup> The evaluations were of pilot projects for Education Directions, processes to reengage disengaged employers, an outbound phone strategy, reminder reviews and corrective nudges.

**Table 3.4: Total liabilities raised from corrective compliance activities, 2017–18 to 2020–21**

Corrective activity	2017–18	2018–19	2019–20	2020–21	Total	% of total
	(\$ million)					
Employee notifications (reactive)	671.3	543.1	486.4	789.9	2,490.7	78%
ATO-initiated (proactive)	179.1	262.2	170.5	91.3	703.1	22%
<b>Total</b>	<b>850.4</b>	<b>805.3</b>	<b>656.9</b>	<b>881.2</b>	<b>3,193.8</b>	<b>100%</b>

Source: ANAO analysis of ATO documentation. The ANAO has not validated this data.

#### Reactive corrective activities

3.21 Employee notifications are the major source of intelligence and the main trigger for ATO compliance activity. The ATO is committed to reviewing every employee notification. The ATO was unable to advise when the commitment to review every employee notification was introduced. A 1999 Auditor-General report stated that the ATO was no longer investigating every employee notification received.<sup>61</sup> In 2000 in response to a Question on Notice in the House of Representatives and in its 2001–02 Annual Report, the ATO reported that its policy was to investigate all employee notifications received.<sup>62</sup> The ATO advised the ANAO that it is unlikely to reconsider the effectiveness of the employee notification policy commitment.

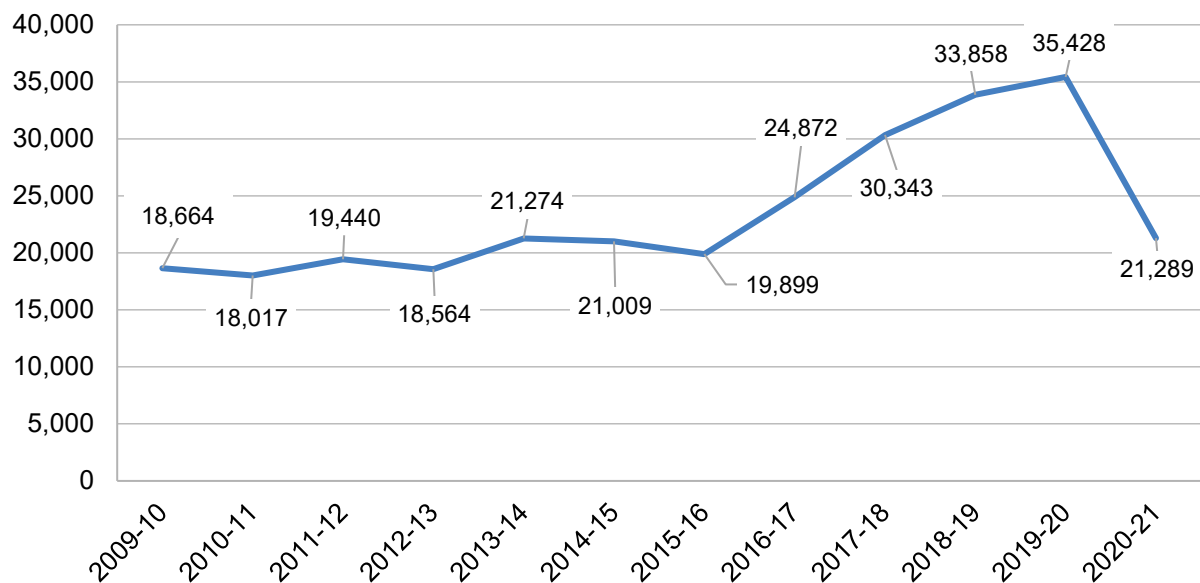
3.22 Between 2009–10 and 2015–16 the ATO received about 20,000 employee notifications annually. Between 2016–17 and 2019–20, the number of employee notifications increased, peaking at 35,428 in 2019–20 before decreasing in 2020–21 (Figure 3.3).<sup>63</sup> A 2020 Senate Estimates brief stated:

The steady growth in [employee notification] receipts is driven by increased visibility of entitlement and payment information online, increased community awareness and interest through media reporting and improvements to make it easier to notify the ATO about unpaid super.

61 Auditor-General Report No. 16 1999–2000, *Superannuation Guarantee*, November 1999, p. 67.

62 House of Representatives Hansard, ‘Superannuation Guarantee Levy: Employer Compliance’, Question on Notice No. 992, 17 February 2000, p. 13864, and ATO, *Commissioner of Taxation Annual Report 2001–02*, October 2002, p. 46.

63 The ATO advised the ANAO that it does not know why the volume of employee notifications decreased in 2020–21.

**Figure 3.3: Numbers of employee notifications received, 2009–10 to 2020–21**

Source: ATO data. The ANAO has not validated this data.

3.23 The ANAO examined a random sample of 50 employee notifications received during 2019–20. Some of the issues raised by employees included:

- phoenixing;
- blanket non-payment of SG to a workforce;
- persistent employer obfuscation in the face of employee complaints;
- failure to pay superannuation funds despite amounts being shown on payslips;
- low job security and the threat of retrenchment or non-renewal of contract if employees are exposed as having complained;
- mistreatment of migrants; and
- underpayment.

3.24 Over the four years to 2020–21 the ATO consistently achieved one of its employee notification (EN) timeliness service commitments:<sup>64</sup> at least 99 per cent of employee notification cases commenced within 28 days of receipt. The other service commitments were not consistently met (Table 3.5). The ATO advised the ANAO that performance against service commitments had improved significantly by December 2021 (66 per cent finalised within nine months of commencement).

64 See ATO, *Current year commitments to service* [Internet], available from <https://www.ato.gov.au/about-ato/commitments-and-reporting/service-commitments/current-year-commitments-to-service/> [accessed 9 December 2021].

**Table 3.5: Timeliness of employee notification processing, 2017–18 to 2020–21**

EN service commitment	Target	2017–18	2018–19	2019–20	2020–21
% of SG EN cases commenced within 28 days of receipt <sup>a</sup>	99%	100%	100%	100%	99%
% of SG EN cases finalised within four months of creation	60%	68%	51%	16%	7%
% of SG EN cases finalised within nine months of creation	90%	99%	99%	88%	37%

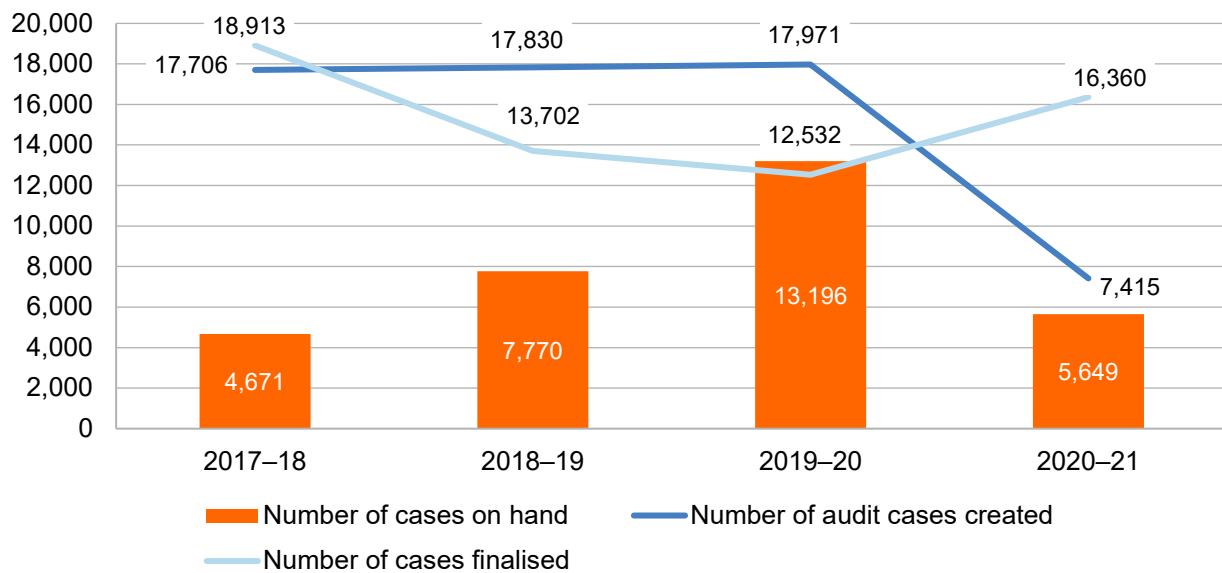
Note a: Timeliness is measured from the date an audit case is created, not the date the complaint was received.

Source: ATO annual reports and ATO advice to the ANAO for 2018–19 data, which was not reported. The ANAO has not validated this data.

3.25 The percentage of employee notification cases closed with Superannuation Guarantee Charge raised and those with no result was relatively stable across the four years. The three main reasons that employee notification cases were closed with no results were: employers had met their SG obligations (42.2 per cent); the employee had withdrawn their complaint (12.9 per cent); and the employer's business was insolvent (9.1 per cent).

3.26 The Superannuation and Employer Obligations Business Service Line reports internally against two timeliness measures: cases on hand (cases that are unallocated, on hold, or in progress) (Figure 3.4); and aged cases (cases that are not closed within the standard timeframe) (Table 3.6).

- The ATO created 60,922 employee notification audit cases between 2017–18 and 2020–21 and raised SGC liabilities of \$2.5 billion from these cases.
- The number of audit cases created in the three years 2017–18 to 2019–20 remained relatively stable before decreasing in 2020–21.
- The number of cases on hand increased in 2018–19 and 2019–20, by 66 and 70 per cent respectively on the previous year's result.
- The ATO reduced the backlog of employee notification cases in 2020–21. An internal ATO performance report stated this was achieved through the allocation of additional resources and a review of processes and procedures. Despite this, the performance report indicated that the SG program was 'out of tolerance' and that it would take time for employee notification service standards to be achieved due to the age of cases on hand.
- The ATO advised the ANAO that the backlog of employee notification cases was cleared by the end of 2021 and a temporary workforce had been released. The ATO advised the ANAO that as at 31 December 2021, there were 2052 cases on hand.

**Figure 3.4: Employee notification audit cases created, finalised and on hand, 2017–18 to 2020–21**

Note a: Cases on hand as at 30 June. Cases created means cases started.

Source: ANAO analysis of ATO performance data. The ANAO has not validated this data.

3.27 The ATO met the aged case target in two of the four years between 2017–18 and 2020–21, nearly met it in one and did not meet it in one (Table 3.6).

**Table 3.6: Percentage of employee notification cases classified as aged as at 30 June, 2017–18 to 2020–21**

	Target	2017–18	2018–19	2019–20	2020–21
Employee notification cases classified as aged	<10%	8%	6%	47%	10%

Note a: An 'aged' case refers to a case that has not been finalised within its 'cycle time' (the standard time allocated to complete a category of audit), generally within 120 days of being allocated to a staff member. Cases can fail the four-month service standard, but not necessarily become an aged case, because the time in which a case remains unallocated is not counted towards the aged case metric.

Source: ATO data. The ANAO has not validated this data.

3.28 Between 2017–18 and 2020–21, the ATO did not always achieve service commitment targets because:

- the number of lodged employee notifications increased substantially in 2017–18 to 2019–20;
- the ATO suspended all ATO-initiated compliance work where the auditee elected for it to do so<sup>65</sup> due to the bushfires and COVID-19 pandemic in 2019 and 2020; and

<sup>65</sup> ATO, *Commissioner of Taxation Annual Report 2019–20*, p. 13: 'Taxpayers being audited were given the choice of continuing or pausing the audits. Most of those who chose to pause their audits were individuals and small businesses.'

- 80 per cent of Superannuation and Employer Obligations Business Service Line staff were redeployed to implement the Australian Government's economic response to the COVID-19 pandemic in 2019–20.

3.29 The increase in the number of employee notifications received by the ATO to 2019–20 and the growth in the backlog led to a range of administrative changes. The ATO advised that it: simplified the employee notification online lodgment form; automated elements of the early-treatment pre-audit process; and grouped cases by complexity, allocating less complex cases to temporary staff.

3.30 In September 2021 the ATO commenced a three-month early engagement pilot for low-risk employee notifications. The objective was to reduce the number of employee notifications that lead to an audit. Employers were engaged via telephone calls, mobile phone messages and ATO online services, reducing response times to early engagement letters from 21 to 14 days.<sup>66</sup> The ATO advised that pilot outcomes were positive, with 85 per cent of employee notification cases finalised within 36 days (compared to 70–80 days for an audit) and 73 per cent resulting in lodgment of an SG Statement. The ATO advised the ANAO that it is now scaling up the strategy and transitioning pilot practices to business as usual.

#### Proactive corrective activities

3.31 The ATO's proactive corrective compliance activities vary in complexity and effort.

- Audits — An audit examines an employer's compliance with SG only; or with SG, Pay As You Go Withholding and Fringe Benefits Tax obligations; involving a direct case time of around 14 hours for SG-only audits.
- Reviews — Distinct from reminder reviews or nudges, a review in the context of proactive corrective activity is a telephone call, email or letter to the employer or their intermediary. A review has an estimated direct case time of three hours. The ATO introduced low-touch, low-cost early intervention reviews in 2017 to target specific employer behaviours.<sup>67</sup>
- Health checks — In 2020–21 the ATO also introduced telephone 'health checks' for employers who had commenced Single Touch Payroll reporting. Health checks include checking on the reported SG obligations.

3.32 In September 2021, 13 of 220 full-time equivalent staff were allocated to proactive compliance activities (see Table 2.2).

3.33 Several reviews have recommended an increase in proactive SG compliance work.

- In May 2017 the Senate Economics References Committee<sup>68</sup> recommended that the ATO consider undertaking more proactive SG initiatives, including random SG audits.

<sup>66</sup> An early engagement letter is sent before a case is created.

<sup>67</sup> Reviews may target employers with previous audit action to remind them when their next SG payment is due; who did not engage during a previous audit activity; or who have a history of non-compliance.

<sup>68</sup> Senate Economics References Committee, *Superbad: Wage theft and non-compliance of the Superannuation Guarantee*, Canberra, May 2017, Recommendation 12, pp. xii, 56–57, 62.



- The Inspector-General of Taxation recommended that the ATO undertake more proactive SG compliance activities in *Review into the ATO's administration of the Superannuation Guarantee Charge* (March 2010).<sup>69</sup>
- The Inspector-General of Taxation made a similar recommendation in *Review into the Australian Taxation Office's employer obligations compliance activities* (December 2016).<sup>70</sup>
- In response to an SG Cross Agency Working Group report to the Minister in 2017, the ATO undertook that proactive casework would be at least 40 per cent of its overall SG casework from 2017–18 (replacing an existing target of 30 per cent):

Within ATO's current funding arrangements, the ATO will re-balance the focus of its superannuation guarantee compliance program to increase by 10 per cent the proportion of its ATO-initiated superannuation guarantee case work to 40 per cent. The ATO finds a greater percentage of non-compliant employers from its proactive case work than from employee notification cases: 82 per cent and 65 per cent respectively.<sup>71</sup>

3.34 The ATO introduced a performance measure for the 40 per cent commitment in 2018–19 (Table 3.7). The ATO reported in its 2020–21 Annual Report that the target was met in three of four years to 2020–21. Although the target was met, the proactive case mix changed from two thirds resource-intensive audits in 2017–18 to 14 per cent in 2020–21. In 2020–21, 86 per cent of proactive activities were low-touch nudges.

**Table 3.7: Number of audits and reviews, 2017–18 to 2020–21**

Cases <sup>a</sup>	2017–18	2018–19	2019–20	2020–21
ATO-initiated audits	4405 <sup>b</sup>	1435	5	1716
Employer Obligations audits <sup>c</sup>	4175	3869	1159	0
Reminder reviews (nudges)	4458	4479	2551	10,398
Total proactive compliance activities	13,038	9783	3715	12,114
<b>Total cases</b>	<b>31,954</b>	<b>24,504</b>	<b>16,247</b>	<b>28,474</b>
Percentage cases that are proactive	40.8%	39.9%	22.9%	42.5%

Note a: Numbers exclude SG Taskforce compliance activities.

Note b: The 4405 ATO-initiated audits in 2017–18 consisted of 1029 'SG-only' audits and 3376 'disengaged revisit streamlined' audits. These two audit products vary in complexity and duration. The 1435 ATO-initiated audits in 2018–19 included 1217 disengaged revisit audits. The direct case time for an SG-only audit is about 14 hours compared to three hours for a disengaged revisit audit.

Note c: Employer Obligations audits cover Pay as You Go and Fringe Benefits Tax as well as SG.

Source: ANAO analysis of ATO data. The ANAO has not validated this data.

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

70 Inspector-General of Taxation, *Review into the Australian Taxation Office's employer obligations compliance activities*, IGT, December 2016, pp. x, 62–63.

71 Superannuation Guarantee Cross Agency Working Group, *Superannuation Guarantee Non-compliance: A report to the Minister for Revenue and Financial Services*, Canberra, 31 March 2017 [released on 14 July 2017], Agency Action 2, pp. 9, 29, 30.

3.35 The ATO internally reports against three efficiency indicators for its proactive compliance work:

- audit strike rate — the proportion of created cases that identify unpaid SG and raise a liability;
- cycle times — the standard time allocated to complete an audit case; and
- aged cases — cases on hand for more than 120 days.

3.36 The main results for 2017–18 to 2019–20 were that the ATO exceeded the strike-rate target in 2019–20 after failing to meet the target in prior years, on the basis of a small number of cases in 2019–20; the ATO consistently exceeded target cycle times; and the aged-case target was consistently met.

3.37 The ATO's capacity to increase the volume of proactive casework is limited by its commitment to action 100 per cent of employee notifications, which, at September 2021, involved 90 per cent of the available full-time equivalent resources. The ATO-wide pause on enforcement activities during the COVID-19 pandemic, and the redeployment of staff to implement the Australian Government's economic response to the COVID-19 pandemic, also impacted on resources available to conduct proactive casework.

## Did the SG Taskforce and Amnesty achieve planned outcomes?

The SG Taskforce partly achieved the planned outcomes. It achieved a higher strike rate from a smaller case pool, but it did not achieve several of its objectives associated with the usage of Single Touch Payroll and other data. The level of proactive compliance activities undertaken by the ATO declined after the SG Taskforce was introduced. The SG Amnesty supported the ATO's transition to a preventative compliance approach by encouraging employers to self-correct non-compliance and is associated with higher voluntary employer lodgments. The ATO did not report on SG Taskforce outcomes. Its reporting of SG Amnesty outcomes could have been improved by adjusting the results achieved to account for the business-as-usual level of voluntary lodgments.

3.38 In August 2017 the Australian Government announced four targeted reforms to improve the integrity and administration of the SG system,<sup>72</sup> leading to two one-off projects in 2018–19 and 2019–2020: the SG Taskforce and the SG Amnesty. The primary objective of the projects was preventative — to reduce the gross SG gap by changing employer behaviour. The SG Taskforce also had corrective elements through increased volume of proactive compliance activities.

### The Superannuation Guarantee Taskforce

3.39 SG Taskforce operations commenced on 1 July 2018 and ended on 30 June 2021. The ATO received additional funding of \$20.92 million over four years for the SG Taskforce to undertake additional data modelling, and early intervention compliance activities using Single Touch Payroll

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72 The reform package was known as the 'Superannuation Guarantee Integrity Package' and was announced by the Minister for Revenue on 9 August 2017. Two of the reforms were related to debt recovery and are discussed in the next section.

and Member Account Transaction Service data; and conduct debt collection activities for unpaid SG.<sup>73</sup>

- Additional data modelling using Single Touch Payroll and Member Account Transaction Service data — Internal reports stated that the SG Taskforce had only partly met the objective of incorporating Single Touch Payroll and Member Account Transaction Service data into ATO risk models and case selection tools (real-time data models were discussed in paragraphs 2.46 to 2.56), and noted that small-scale case selection activities required substantial manual intervention and were not sustainable.
- Early intervention compliance activities using Single Touch Payroll and Member Account Transaction Service data — In December 2017 an Assistant Commissioner sought clarification on the role and activities of SG Taskforce resources and proposed and obtained agreement for the SG Taskforce to be used for high-risk audit work. The focus was changed from early intervention reviews based on Single Touch Payroll data to high-risk employers through existing case selection models using standard SG audit treatments. The ATO advised the ANAO that:

We do not agree that this is a departure from the funding approval, as it was still in the spirit of the [New Policy Proposal], which was about earlier intervention, and being proactive rather than reactive.

- Debt collection activities for unpaid SG — The ANAO was unable to assess the extent to which the SG Taskforce undertook debt collection activities for unpaid SG. A September 2020 internal audit report stated that several business service lines did not separately identify taskforce-funded resources from business-as-usual activities because there was no information technology solution to support the separation. An apportionment method to estimate the effect of the additional funding was not able to clearly demonstrate end-to-end outcomes. The internal audit report made one recommendation, that the taskforce implement end-to-end case reporting (from liabilities raised to collection of SG debts).

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

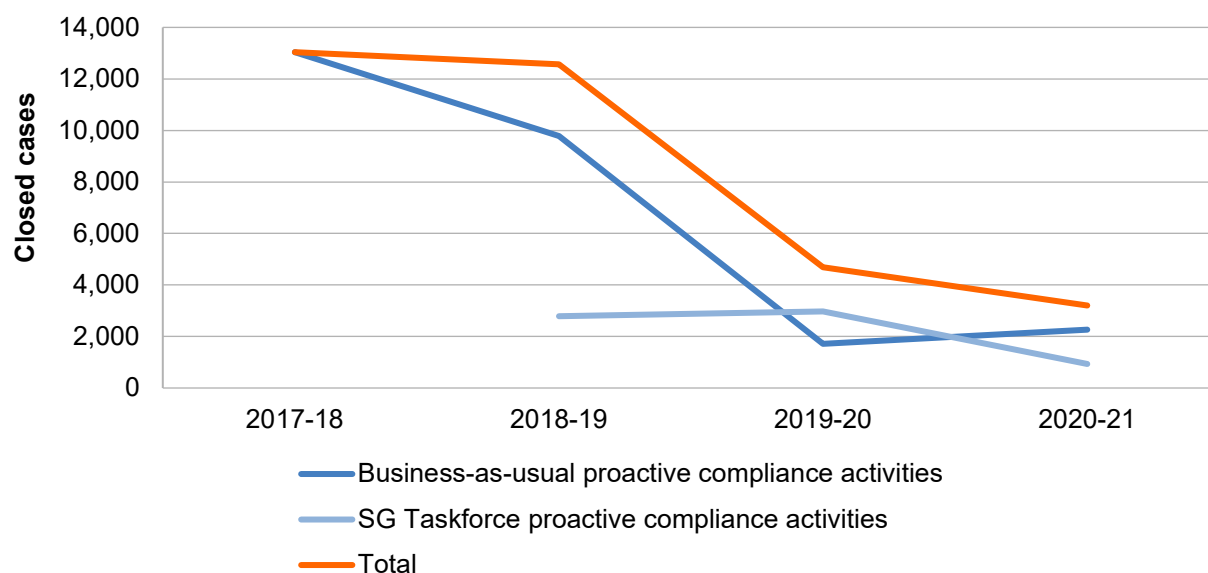
3.41 The audit strike rate ranged between 92 and 96 per cent compared to a business-as-usual strike rate average of 74 per cent and a target of 90 per cent or higher.<sup>74</sup> The higher strike rate may in part be due to SG Taskforce audit cases being selected from high-risk, disengaged employers in the small and micro business market segments.

3.42 Proactive closed cases decreased between 2017–18 and 2019–20 (see Figure 3.5). The SG Taskforce funding coincided with a significant increase in the number of employee notifications lodged and in reductions in resources applied to this function as they were shifted to the COVID-19 response measures.

73 *Mid-Year Economic and Fiscal Outlook 2017–18*, 'Superannuation Guarantee Integrity Package — Superannuation Guarantee Compliance Taskforce', p. 120.

74 The audit strike rate is the proportion of cases created that identify unpaid SG and raise a liability.

**Figure 3.5: Business-as-usual and SG Taskforce proactive closed cases, 2017–18 to 2020–21**



Note a: ATO business-as-usual proactive work includes nudges, whereas SG Taskforce activities were all audits.

Source: ATO. The ANAO has not validated this data.

3.43 The ANAO examined whether the ATO evaluated outcomes. There was no coordinating governance or clear lines of reporting of SG Taskforce activities across the four business service lines involved. Although the ATO prepared performance measures and conducted internal reviews part way through the project, it did not evaluate or prepare a final report on outcomes. Four previous Auditor-General reports<sup>75</sup> have identified issues regarding the transparency of the ATO's taskforce activities.

### The Superannuation Guarantee Amnesty

3.44 The SG Amnesty provided employers with an opportunity to voluntarily disclose and pay any shortfall without incurring the usual \$20 per employee per quarter administration fees or penalties, while retaining tax deductibility of disclosed amounts. The original intention was for the SG Amnesty to precede the SG Taskforce to provide employers with an opportunity to self-correct historical non-compliance before the introduction of Single Touch Payroll and Member Account Transaction Service reporting.

3.45 A 12-month Amnesty for voluntary employer SG disclosures was announced by the Minister for Revenue and Financial Services on 24 May 2018 on introduction of the Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018 into Parliament. After Parliament was dissolved on 11 April 2019 the Bill lapsed. On 18 September 2019 the Minister for Housing and Assistant Treasurer reintroduced the Amnesty via the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019, which received Royal Assent on 6 March 2020.

<sup>75</sup> See: Auditor-General Report No. 15 2016–17, *Meeting revenue commitments from compliance measures*; Auditor-General Report No. 41 2016–17, *Management of selected fraud prevention and compliance budget measures*; Auditor-General Report No. 51 2017–18, *The design, implementation and monitoring of Health's savings measures*; and Auditor-General Report No. 18 2019–20, *Tax Avoidance Taskforce – meeting budget commitments*.

3.46 From February 2020, the Australian Government had also commenced the introduction of a range of policies and measures in response to the emergence of COVID-19. On 18 March 2020, in response to the pandemic in Australia, the Governor-General of the Commonwealth of Australia declared that a human biosecurity emergency exists.<sup>76</sup>

3.47 The SG Amnesty legislation provided for an Amnesty to apply to SG Statements lodged between 24 May 2018 and 7 September 2020. The Amnesty period was for SG quarters between 1 July 1992, when the SG system was introduced, to the quarter ending 31 March 2018.

3.48 There were three eligibility criteria: employer disclosures were made during the Amnesty period; they related to an amount of SG shortfall not previously disclosed; and they were in the approved form. The Amnesty did not extend to SG quarters where the employer had been informed that the ATO was examining or intended to examine the employer's SG compliance.

3.49 Where an employer disclosed an amount of unpaid SG for a quarter that qualified for the Amnesty, the employer was not charged the administration component of the Superannuation Guarantee Charge or penalties and could claim a tax deduction for SG payments made before the end of the Amnesty period. There were disqualification provisions for employers who disclosed but did not pay their historical SG debt in full or maintain agreed payment plans. Disqualified employers lost Amnesty benefits for any unpaid quarters.

#### *Administering the Amnesty*

3.50 The Superannuation and Employer Obligations Business Service Line established appropriate governance arrangements to oversee implementation of the Amnesty.

3.51 The ATO was allocated \$974,200 across 2017–18 to 2018–19 to conduct a communications campaign. This included funding for the ATO to commission research on non-compliance. By 6 March 2020 the ATO had in place the necessary system updates and communications.

3.52 The ATO anticipated a significant increase in the number of applications lodged in the final weeks of the Amnesty. In the week commencing 31 August 2020, the ATO received 2229 inbound calls; 21,000 Amnesty applications were downloaded from the ATO's website; and around 17,000 disclosures were received, with 7000 of these on the final day. A post-implementation review stated:

This last minute approach resulted in significant pressure in the final days from large employers and accounting firms seeking assistance by phone...which was unprecedented and continued late into the evening on 7 [September] 2020.

#### *Amnesty outcomes*

3.53 At 30 April 2021 the ATO reported Amnesty disclosures totalling \$912 million, the major components of which were:

- \$789.5 million (87 per cent) paid into 692,266 employee superannuation accounts<sup>77</sup>;
- \$19.6 million paid to the ATO and awaiting transfer to funds; and
- \$55.7 million under payment plan.

<sup>76</sup> *Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) Declaration 2020*, 18 March 2020.

<sup>77</sup> This amount includes late payment offset amounts paid directly to superannuation funds by employers.

3.54 At 30 April 2021 approximately 2500 (or nine per cent) of eligible employers had not paid or set up a payment plan as required by the legislation.<sup>78</sup> According to ATO analysis, 42 per cent of these employers made disclosures in the final week of the Amnesty with the majority from the small business market segment. In February 2021 the ATO commenced its disqualification strategy with a bulk letter mail-out and follow-up telephone contact to encourage employers to pay in full or set-up payment arrangements. Employers who did not act following this contact were disqualified from the Amnesty. At 30 June 2021 the ATO had disqualified 231 employers.

3.55 A Superannuation and Employer Obligations Business Service Line post-implementation review stated that Amnesty data was being analysed and compared to SG Statement lodgment data and compliance strategies. It summarised Amnesty participation and demographic data, noting that:

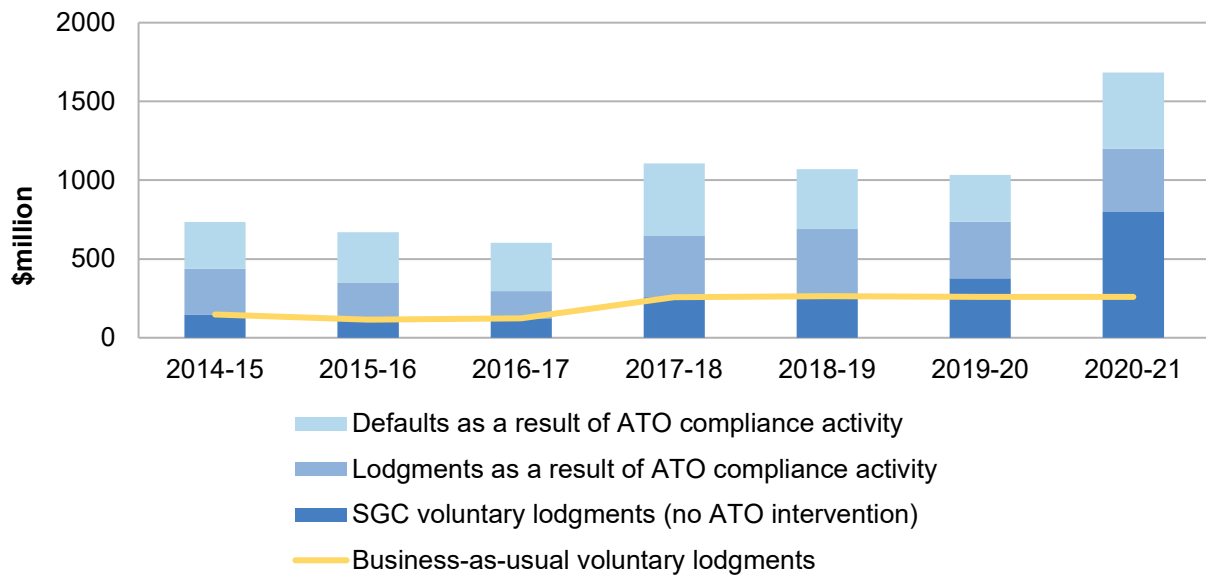
- 70 per cent of employers were micro businesses;
- 55 per cent of employers, and 45 per cent of amounts disclosed, were from the top five high-risk industries: construction, retail trade, professional scientific and technical services, accommodation and food services, and other services; and
- 62 per cent (\$561 million) of amounts disclosed were for three financial years immediately before the Amnesty — 2015–16, 2016–17 and 2017–18.

3.56 The ATO's reporting of Amnesty outcomes could be improved. It did not record or report Amnesty outcomes by financial year or benchmark Amnesty outcomes against business-as-usual baseline outcomes.

3.57 The three different routes for Superannuation Guarantee Charge (SGC) lodgment are voluntary lodgment by the employer; lodgment due to ATO compliance activity; and default assessment by the ATO after the employer's failure to respond to ATO compliance activity. The value of Superannuation Guarantee Charge voluntary lodgments increased between 2015–16 and 2020–21 (Figure 3.6). The average value of Superannuation Guarantee Charge voluntary lodgments in 2017–18 and 2018–19, the two years before the Amnesty was legislated, provides a business-as-usual baseline outcome of around \$250 million annually. Compared to this baseline, voluntary lodgments in 2019–20 and 2020–21 increased by \$127 million and \$552 million respectively.

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78 The ATO advised that 44 of these employers had not entered into a payment plan pending resolution of a complaint or review process.

**Figure 3.6: SG Statement lodgments and liabilities raised, 2014–15 to 2020–21**

Note: 'Lodgments as a result of ATO compliance activities' are lodgments made by employers after compliance activity has commenced. 'Defaults as a result of ATO compliance activity' are where the ATO raises Superannuation Guarantee Charge liabilities as a result of an audit or review. The business-as-usual baseline for voluntary lodgments (yellow line) is based on the actual results for each year to 2018–19. An average of the two preceding years before the SG Amnesty commenced (2017–18 and 2018–19) was used for 2019–20 and 2020–21.

Source: ANAO analysis of ATO data. The ANAO has not validated this data.

3.58 Auditor-General Report No. 15 2016–17 recommended that, in developing compliance measures, the ATO document in its funding proposals how the additional revenue from a measure will be determined and any pre-existing level of activity related to the compliance risks addressed by the measure. The ATO disagreed with this recommendation.

The ATO has indicated that for some measures it would be difficult to identify the base level of revenue and requiring it to maintain a base level of compliance activity under a measure would limit its ability to reallocate resources to realise higher revenue in other areas.<sup>79</sup>

<sup>79</sup> Auditor General Report No. 15 of 2016–17, *Meeting Revenue Commitments from Compliance Measures*, September 2016, paragraph 12, pp. 9–10.

## Has the ATO effectively used its debt-recovery powers to collect unpaid superannuation?

The ATO has been partly effective in using its debt recovery powers to collect unpaid SG. Pauses in enforcement during the 2019–20 bushfires and COVID-19 pandemic impacted debt recovery as demonstrated by:

- stronger enforcement powers received in January 2019 have largely not been exercised;
- firm compliance activity was used less frequently during 2019–20 and 2020–21; and
- elements of new systems were turned off.

Pauses in enforcement were intended not to apply to egregious and criminal cases but enforcement against phoenix operators through Director Penalty Notices also decreased from 2018–19. Compared to the increase in total ATO debt during 2020–21, SG debt increased disproportionately.

3.59 Once the ATO has advised an employer that the employer owes SG, that amount (the Superannuation Guarantee Charge) is a debt owed to the Commonwealth. The ATO seeks to collect the debt for payment to the employee's superannuation fund. An employer's failure to lodge an SG Statement (outlining the amounts of unpaid SG) on time may lead to the imposition of a penalty that may be twice the amount originally due (see Appendix 3).

3.60 To determine whether the ATO has effectively used its debt recovery powers to collect unpaid SG, the ANAO examined the ATO's use of debt recovery powers, development and application of new systems to recover debt, and use of penalties; and the amount of Superannuation Guarantee Charge transferred to employees' superannuation funds.

### Use of powers to recover debt

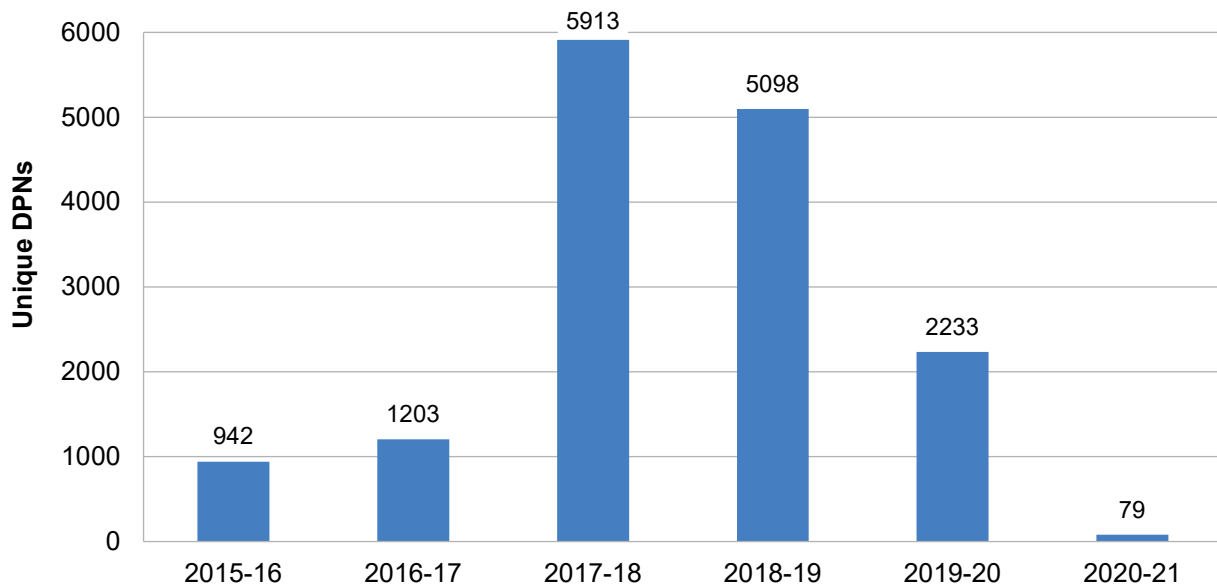
3.61 For some years, the ATO has taken a 'whole of client' approach to debt recovery. ATO risk assessments and strategies describe a whole of client approach as one which considers all of the client's outstanding debts, including but not limited to SG debt, and which balances clients' needs against organisational needs.

3.62 The ATO's stronger enforcement actions include: garnishee notice; Director Penalty Notices; disclosure of business tax debts; and various forms of legal action, such as a summons, bankruptcy notice, creditor's petition, statutory demand or wind-up action.

3.63 The ATO can recover debt by issuing a garnishee notice to, for example, a bank or financial institution that holds a person's or company's funds. Garnishee actions for SG have decreased significantly since 2018–19 (3673 in 2018–19, 693 in 2019–20, and 17 in 2020–21).

3.64 The number of Director Penalty Notices (DPNs) issued by the ATO in the last six years is shown in Figure 3.7.



**Figure 3.7: Unique Director Penalty Notices issued in relation to SG debt, 2015–16 to 2020–21**

Note a: Unique notices issued to individual directors (that is, notices issued to multiple directors for the same company on the same day) are counted once per director/notice. Any Superannuation Guarantee Director Penalty Notices issued prior to February 2018 will only be included in these figures if they were transitioned to new systems — not all Director Penalty Notices were transitioned.

Source: ATO. The ANAO has not validated this data.

3.65 The value of Director Penalty Notices imposed and the amounts collected decreased significantly from 2017–18 to 2020–21.<sup>80</sup> The number of companies issued with two or more Director Penalty Notices decreased from 1471 in 2017–18 to 16 in 2020–21.

3.66 In 2019 the methods to recover Superannuation Guarantee Charge debt were enhanced in four ways (Table 3.8).<sup>81</sup> The ATO has issued Education Directions but has made limited use of other new powers.

**Table 3.8: ATO's use of new powers to recover Superannuation Guarantee Charge debt**

New powers	Description of new powers	ATO's use of new powers
Security Bond Demand	The power to seek a court order requiring an employer to provide a security bond over an unpaid tax or superannuation liability.	Between 2017–18 and 2020–21 one Security Bond Demand that included SG was issued.
Director Penalty Notices	The ATO's existing power to issue Director Penalty Notices (applicable since 2012) was strengthened by abolishing the three-month period that enabled directors to place a company into administration or liquidation and so escape liability for unpaid SG.	Not applicable as this was an existing power.

80 2017–18: \$355 million imposed and \$99 million collected; 2018–19: \$282 million and \$80 million; 2019–20: \$149 million and \$31 million; 2020–21: \$18 million and \$1 million.

81 The *Treasury Laws Amendment (2018 Measures No. 4) Act 2019* received Royal Assent on 1 March 2019 and came into effect on 1 April 2019. These powers are available to the ATO as methods to pursue other types of debt.

New powers	Description of new powers	ATO's use of new powers
Direction to Pay	The power to issue an employer with a Direction to Pay unpaid SG. Failure to comply was made a criminal offence. This power was intended to be used against employers with a history of serious non-compliance.	No Directions to Pay have been applied for since the ATO was given this power in 2019. The ATO advised the ANAO that it prioritises firmer recovery action prior to invoking a Direction to Pay.
Education Direction	The power to require a person who has failed to comply with taxation laws to undertake a course on taxation laws, accessible from the ATO's website. <sup>a</sup>	The ATO issued 551 Education Directions in 2019–20 and 1716 in 2020–21.

Note a: ATO, *Super guarantee employer obligations course* [Internet], available from <https://www.ato.gov.au/Business/Super-for-employers/Super-guarantee-employer-obligations-course/> [accessed 28 November 2021].

Source: Treasury Laws Amendment (2018 Measures No. 4) Bill 2018; *Treasury Laws Amendment (2018 Measures No. 4) Act 2019*, Schedule 1, Part 2; ATO documentation and ATO advice to the ANAO as at September 2021.

### 3.67 The ATO advised the ANAO in September 2021 that:

With the ATO pausing and then recommencing debt recovery activities in a phased manner in response to the ongoing COVID economic challenges, there has not been sufficient time to assess the effectiveness of the powers. This is due to a high proportion of small business clients representing our SG debt population, we have needed to respond cautiously and appropriately to the current economic environment when considering the use of escalated actions.

## Development and application of new systems to recover debt

3.68 In December 2017 the ATO deployed a 'Director Penalty for SG' system, removing the need for much of the manual work previously associated with managing Director Penalty Notices and enabling the removal of the previous cap of 2500 per year.

3.69 During 2019 the ATO adopted new data analytics models to guide how it dealt with debtors, using graduated steps from automated nudges to preventative strategies to firmer actions. In April 2020 this approach was underpinned by a new operating model, which differentiated debtors for minimal-touch actions (for example, monitoring of payment plans), low-touch actions (for example, provision of ATO assistance through digital channels), medium-touch actions (for example, warning letters) and high-touch actions (for example, Director Penalty Notices or legal action).

3.70 The Activity Statement Financial Processing system was deployed in December 2019. The new system included a new Payment Receivables Management system, replacing a previous system that treated all clients alike. Using data analytics, the new system was intended to assess all clients in the tax and superannuation system in real time, and to select which debts to action, using the best strategy for a particular taxpayer based on their previous compliance history. The new system was intended to deliver eight million tailored client interactions per year and to manage \$60 to \$80 billion of debt annually.

3.71 In January 2020 the ATO paused recovery actions against bushfire-affected clients, which included turning off elements of the new systems. In March 2020 the ATO paused most of its firmer and stronger recovery activities (except for high-risk cases involving egregious taxpayers and criminals). These pauses were based on the ATO's general power of administration as to how it

enforces its legislation. At the same time, the ATO reminded employers that they still needed to meet their ongoing SG obligations for their employees. In January 2021 the ATO reported that it had granted additional time beyond the original due date for more than 12.9 million lodgments and payments, and 680,000 payment plans were tailored to individual circumstances.<sup>82</sup>

3.72 In mid-2020, the ATO planned to resume its recovery activities in a phased approach over six months: Phase 1 (from June 2020) — help-and-assist actions; Phase 2 (from September 2020) — re-introduction of warnings; and Phase 3 (from November 2020) — introduction of firmer actions where appropriate.

3.73 In October 2020 ongoing COVID-19 lockdowns prompted the ATO to delay Phases 2 and 3, initially to February–May 2021. Further lockdowns in New South Wales and Victoria from mid-2021 occurred as the ATO was preparing to resume normal debt-recovery activity. As at October 2021, the new debt-recovery systems were not expected to operate in a business-as-usual environment for the ATO categories of firmer and stronger debt recovery until 1 July 2022.

### Use of penalties to encourage compliance

3.74 To encourage employers to comply with their Superannuation Guarantee obligations, Part 7 of the *Superannuation Guarantee (Administration) Act 1992* (the SGA Act) provides for penalties (Appendix 3). The penalties outlined in the SGA Act are significant and illustrative of the Parliament's 1992 intention to establish a system where voluntary compliance would be a much more attractive option to employers than becoming subject to ATO enforcement.

3.75 Employers who have failed to pay the correct amount of SG on time must lodge an SG Statement with the ATO within one calendar month after the SG due date. Where an employer does not lodge an SG Statement, the Commissioner of Taxation may make a default assessment of the shortfall amount and the Superannuation Guarantee Charge payable on the shortfall. Superannuation Guarantee Charge is not tax deductible.

3.76 The Commissioner of Taxation may remit some or all of the Part 7 penalty or provide penalty relief.<sup>83</sup> Penalty remission supports the ATO's transition to a proactive compliance approach by encouraging employers to self-correct non-compliance.

3.77 The ATO issues guidance to staff to encourage consistency in remission decisions and to reflect community and government expectations.<sup>84</sup> In response to concerns from employers and industry about guidance issued in November 2020,<sup>85</sup> in July 2021 the ATO released revised draft

82 ATO, *ATO Regulator Performance Framework self-assessment report 2019–20*, January 2021, p. 9.

83 From 8 September 2020, the day after the SG Amnesty ended, by law the Commissioner cannot remit Part 7 penalties below 100 per cent of the amount of SGC payable, for quarters covered by the SG Amnesty, except under exceptional circumstances. *Superannuation Guarantee (Administration) Act 1992*, subsections 62(4) and 62(5). The significant increase in Part 7 penalties — and the subsequent restrictions on the ability of the ATO to remit those penalties — were an incentive for employer participation in the SG Amnesty.

84 In July 2020 the ATO released draft policy guidance on the application of the new penalty provisions that would apply from 8 September 2020. The ATO policy guidance extended the same approach to non-Amnesty quarters as the SGA Act applies to Amnesty quarters (that is, no remissions below 100 per cent in either case). However, under the SGA Act, the Commissioner retained the discretion to remit penalties in exceptional circumstances.

85 ATO Practice Statement Law Administration, PSLA 2020/4 *Remission of additional superannuation charge*. The policy guidance did not enable ATO staff to differentiate between employers with a good compliance history and repeat offenders.

guidance. The revised draft guidance enabled a higher level of penalty remission for employers who attempt to comply with their SG obligations by making late payments. The guidance provided for additional remission where education was considered a more effective option. In addition, penalty relief was to be available for employers with a turnover of less than \$50 million with a compliant lodgment history that meets certain criteria. The draft guidance was open for comment until 27 August 2021 and was finalised on 25 November 2021.<sup>86</sup>

3.78 Between 8 September 2020 and 28 February 2021, the ATO imposed a Part 7 penalty on 2406 employers resulting in \$126 million in net penalties. The numbers of Part 7 penalties issued since 2016–17, and the extent to which the Part 7 penalty was remitted, are shown in Table 3.9. In 2020–21, 60 per cent of Part 7 penalties were fully remitted, and a full (200 per cent) penalty was fully applied for fewer than one per cent of Part 7 penalties issued.

**Table 3.9: Part 7 penalties on Superannuation Guarantee Charge closed cases that resulted in a liability, 2016–17 to 2020–21**

	2016–17		2017–18		2018–19		2019–20		2020–21 <sup>a</sup>	
Remission amount (penalty)	No.	%	No.	%	No.	%	No.	%	No.	%
Nil Remitted (200%) <sup>b</sup>	0	0%	0	0%	1	<1%	5	<1%	55	<1%
151–199%	808	10%	2380	13%	3257	19%	1790	15%	1935	15%
101–150%	2287	29%	3969	21%	2507	15%	1223	10%	1270	10%
51–100%	26	<1%	342	2%	375	2%	206	2%	1038	8%
1–50%	3	<1%	10	<1%	14	<1%	92	1%	760	6%
Fully remitted <sup>c</sup>	4864	61%	11,787	64%	10,635	63%	8992	73%	7648	60%
<b>Total</b>	<b>7988</b>	<b>100%</b>	<b>18,488</b>	<b>100%</b>	<b>16,789</b>	<b>100%</b>	<b>12,308</b>	<b>100%</b>	<b>12,706</b>	<b>100%</b>

Note a: 2020–21 results do not include the impact of the Part 7 remediation process conducted in the first quarter of 2021–22.

Note b: 'Nil remitted' means the whole prescribed 200 per cent Part 7 penalty was exacted.

Note c: 'Fully remitted' means the prescribed 200 per cent Part 7 penalty was completely erased.

Source: ATO. The ANAO has not validated this data.

## Superannuation Guarantee Charge collection and transfer to employees

### *Superannuation Guarantee Charge raised and collected*

3.79 The amounts of Superannuation Guarantee Charge liabilities raised<sup>87</sup> against employers over the last four years are shown in Figure 3.6. There was a significant increase in employee notifications in the three years from 2016–17 with a corresponding increase in the Superannuation

<sup>86</sup> ATO Practice Statement Law Administration, PSLA 2021/3 *Remission of additional superannuation guarantee charge*.

<sup>87</sup> The ATO uses the term SGC 'raised', and similarly for debt uses the term 'debt raised'. Not all SGC and debt raised is collected.

Guarantee Charge liabilities raised from default assessments. The voluntary disclosure of \$802 million in 2020–21 can be attributed to the SG Amnesty.

3.80 The ATO's published target for Superannuation Guarantee Charge raised was \$1.02 billion in 2020–21 and \$812 million in 2021–22. The total Superannuation Guarantee Charge liabilities raised exceeded the target in 2020–21 (\$1.7 billion).

3.81 The published targets for Superannuation Guarantee Charge collected were \$516 million in 2020–21 and \$462 million in 2021–22.<sup>88</sup> Performance in Superannuation Guarantee Charge collection in 2020–21 exceeded the target (\$1.0 billion).

3.82 Table 3.10 shows the percentage of Superannuation Guarantee Charge collected each year as a proportion of the amount raised in that year, noting there is not a straight line between the amount raised and collected in a single financial year. The collected-to-raised ratio peaked in 2019–20. The ATO advised the ANAO in October 2021 that an increase in the ratio in 2019–20 was due to the SG Amnesty and was not sustainable; post-Amnesty the ATO expects it to return to about 50 per cent.

**Table 3.10: Superannuation Guarantee Charge raised and collected, 2014–15 to 2020–21**

	2014–15	2015–16	2016–17	2017–18	2018–19	2019–20	2020–21
	\$m	\$m	\$m	\$m	\$m	\$m	\$m
Total raised	734	670	604	1107	1069	1034	1683
Total collected	379	341	283	441	577	674	1040
% raised that was collected	51.6%	50.9%	46.9%	39.8%	53.9%	65.2%	61.8%

Note a: The total collected in a particular year may not have been raised in that same year; collections may arise from assessments made in previous years and may continue over several years. The total collected also includes associated General Interest Charge.

Source: ATO. The ANAO has not validated this data.

3.83 Internal ATO documentation dated August 2021 attributes a 'historically poor' collection rate to Superannuation Guarantee Charge liabilities often being raised when the liability has significantly escalated and employers are close to or already insolvent. The same documentation noted that the ATO was implementing new strategies to identify non-compliance and raise liabilities earlier.

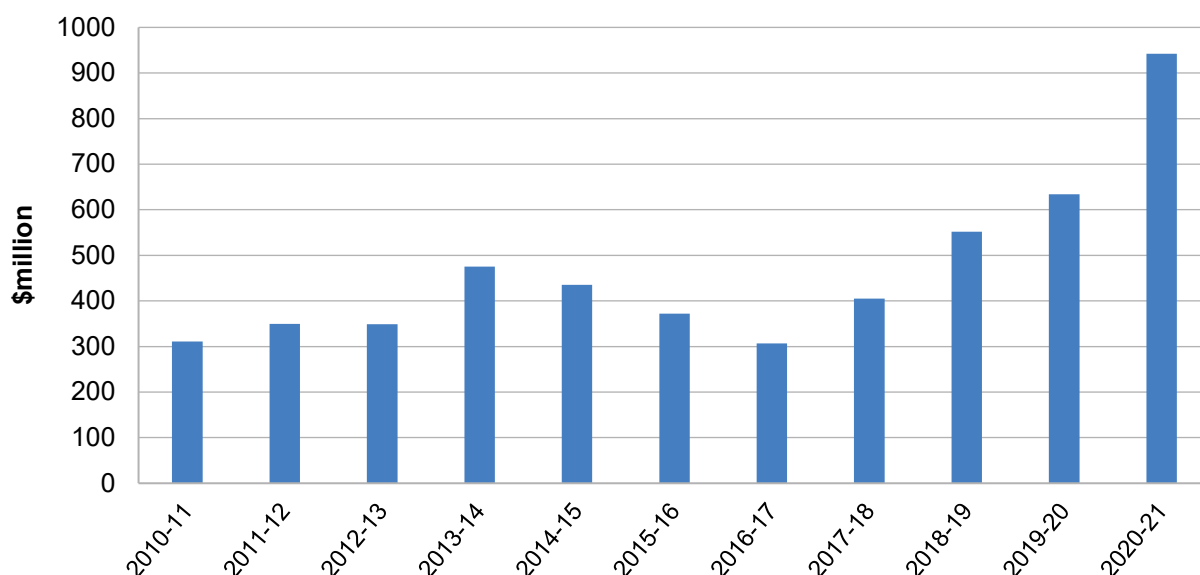
#### *Superannuation Guarantee Charge transferred to employees' superannuation funds*

3.84 The amounts transferred by the ATO to employees' superannuation funds are shown in Figure 3.8. ATO records indicate that from 2017–18 to 2020–21, the proportion of money collected that was transferred to superannuation funds was 91 or 92 per cent.<sup>89</sup>

88 Portfolio Budget Statements 2021–22, Treasury Portfolio, p. 221.

89 For discussion of the Superannuation Holding Accounts Special Account, see Appendix 4.

**Figure 3.8: Superannuation Guarantee Charge transferred to employees' superannuation funds, 2010–11 to 2020–21**



Note a: The amounts appropriated do not take account of money later returned to the ATO by superannuation funds because they were unable to match the money to a particular account holder.

Source: ANAO analysis of appropriations to employees in audited financial statements in ATO Annual Reports. The ANAO has not validated this data.

### *Superannuation Guarantee Charge debt on hand*

3.85 In 2021–22 as a result of the enforcement pauses, the ATO’s overall target for collectable debt was changed from a target of less than 5.5 per cent of net tax collections to a target of less than eight per cent. At September 2021, the result was 8.4 per cent.

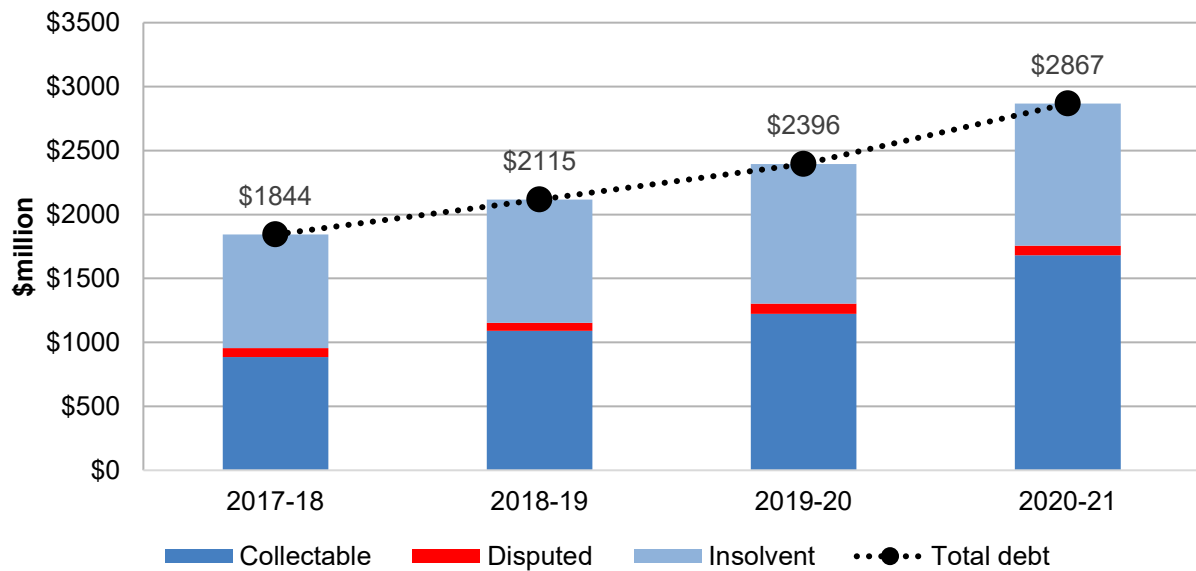
3.86 In a 2018 strategy document, the ATO noted that SG debt levels were continuing to rise. ATO analysis in 2019 and 2020 identified some underlying drivers including natural growth from tax collections and compounding interest; resourcing challenges; economic conditions; and natural disasters. Some of the growth may also be attributed to the increase in debts raised from the increase in employee notifications since 2016–17.

3.87 In June 2021 the Inspector-General of Taxation stated that Superannuation Guarantee Charge accounts were not viewable in the Business Portal<sup>90</sup>, causing a lack of visibility for businesses over their Superannuation Guarantee Charge debt, and that further investigation was required.<sup>91</sup>

3.88 The cumulative amount of Superannuation Guarantee Charge debt owed to the ATO, as advised to the ANAO in November 2021, is shown in Figure 3.9. About half of the \$1.8 billion in SG debt in 2017–18 was insolvent debt, which poses a revenue risk. The 2020–21 data shows a decrease in the proportion of SG debt that is insolvent and a corresponding increase in the proportion of collectable debt. Between June 2020 and June 2021, total SG debt increased by 19.7 per cent, while total ATO debt increased by 10.5 per cent.

90 The ATO Business Portal was a free website for business to manage their tax affairs. It was replaced in July 2021 with online services for business.

91 Inspector-General of Taxation, *An Investigation and Exploration of Undisputed Tax Debts in Australia*, Canberra, June 2021, p. 79.

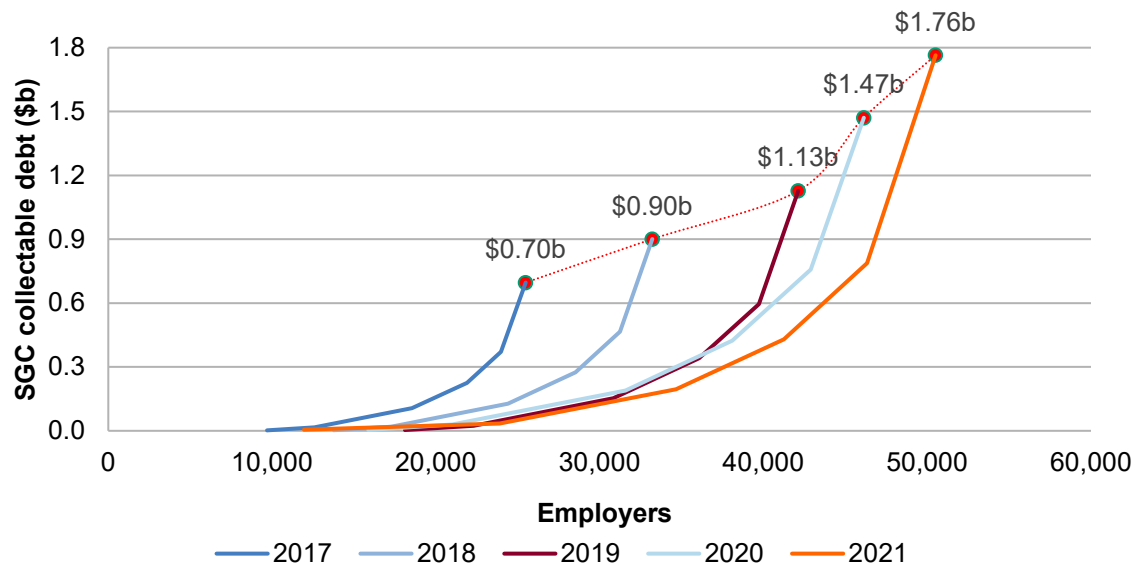
**Figure 3.9: Superannuation Guarantee Charge debt on hand, 2017–18 to 2020–21**

Note a: Insolvent debt is where the employer has entered into insolvency. This debt may be awaiting dividend or non-pursuit if no dividend is expected. Disputed debt is where an objection, appeal or similar has been lodged. This debt may be reduced by a favourable client outcome, may become collectable debt after the dispute is finalised or may become insolvent debt. The interest and penalties component of disputed debt is nearly 40 per cent. The ATO does not pursue stronger actions or recovery when a debt has been disputed, except in extremely rare circumstances. Collectable debt is where employers agree they owe the money but are unable to pay. The interest and penalties component of collectable debt is 16 per cent.

Source: ATO.

3.89 Figure 3.10 illustrates the substantial proportion of collectable debt owed by a relatively small number of employers. Almost 40 per cent of debtor employers owe small debts, while a quarter of debtor employers owe 85 per cent of the total, and the top six per cent owe nearly half the collectable debt. The ANAO has seen no evidence that the ATO focuses on the top six per cent. There would be merit in the ATO considering the largest debtors when prioritising cases for debt recovery action along with the employer's capacity to pay. Collecting from the 25 per cent of employers with the greatest debt would have potential to recover more than 80 per cent of the collectable debt.

**Figure 3.10: Superannuation Guarantee Charge debt on hand by number of employers, 2017 to 2021**



Source: ANAO analysis of ATO data as at August 2017, August 2018, August 2019, October 2020 and September 2021. The ANAO has not validated this data.

3.90 The March 2021 Debt and Lodgment Strategy outlined strategic objectives for dealing with failure to collect debt, including SG debt. These objectives included making timely contact with clients; tailoring solutions; understanding drivers; and differentiated strategies. The ATO advised the ANAO in October 2021 that its debt-recovery approach is leading-edge amongst Organisation for Economic Co-operation and Development countries, building on behavioural economics, big data, data and predictive analytics, and a focus on prevention. The ATO advised that it is 18 months from being well positioned to evaluate the effectiveness of the changes in its approach.



### Recommendation no. 3

3.91 To maximise the benefit to employees' superannuation funds, the ATO:

- (a) make more use of its enforcement and debt recovery powers;
- (b) develop performance measures for evaluating the effectiveness of debt recovery; and
- (c) consider the merit of incorporating debtors holding the majority of debt into the prioritisation of debt recovery actions.

**Australian Taxation Office response:** *Agreed.*

3.92 *(a) The ATO agrees to make more use of its enforcement and debt recovery powers, where appropriate. The ATO paused much of its firmer action in favour of support and assistance to the Australian community through the COVID-19 pandemic. Firmer debt recovery actions have now recommenced.*

3.93 *(b) The ATO will consider enhancing its performance measures for evaluating the effectiveness of debt recovery.*

3.94 *(c) The ATO agrees to consider the merit of prioritising debt recovery action for debtors holding the majority of debt, noting that we consider all clients for debt recovery action and tailor our action appropriately to the taxpayer's circumstances.*



Grant Hehir  
Auditor-General

Canberra ACT  
28 April 2022



## **Appendices**

## Appendix 1 Australian Taxation Office response



Australian Government  
Australian Taxation Office

Second Commissioner of Taxation

Grant Hehir  
Auditor-General for Australia  
Australian National Audit Office  
GPO Box 707  
CANBERRA ACT 2601

Dear Mr Hehir,

**Re: ANAO s19 draft report for Addressing Superannuation Guarantee Non-compliance audit – 7 March 2022**

Thank you for your letter dated 7 March 2022 and for the opportunity to provide comments on the s19 draft report for the Addressing Superannuation Guarantee Non-compliance audit.

I would like to acknowledge and thank the ANAO audit team for their co-operative and professional approach as they engaged with us and reviewed the effectiveness of our Superannuation Guarantee compliance framework and activities.

The ATO agrees in part with the three recommendations as presented in the s19 report (provided at Attachment A).

Our formal response (provided at Attachment B) acknowledges the importance of the superannuation guarantee to the Australian community, and its vital role in providing for people's retirement. The ATO administers key elements of the superannuation law including the super guarantee charge, with the objective of giving all Australians the confidence that the superannuation system is working in their best interests. We are proud of the work we have done to increase willing participation in the superannuation system, but note the challenges we face as we move towards implementing more proactive and preventative compliance approaches.

If you require further information on this matter, please contact Michelle Allen, Acting Assistant Commissioner, on 02 6216 8201.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jeremy Hirschhorn'.

Jeremy Hirschhorn  
Second Commissioner of Taxation  
31 March 2022

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## Appendix 2 Improvements observed by the ANAO

1. The existence of independent external audit, and the accompanying potential for scrutiny improves performance. Improvements in administrative and management practices usually occur: in anticipation of ANAO audit activity; during an audit engagement; as interim findings are made; and/or after the audit has been completed and formal findings are communicated.

2. The Joint Committee of Public Accounts and Audit (JCPAA) has encouraged the ANAO to consider ways in which the ANAO could capture and describe some of these impacts. The ANAO's 2021–22 Corporate Plan states that the ANAO's annual performance statements will provide a narrative that will consider, amongst other matters, analysis of key improvements made by entities during a performance audit process based on information included in tabled performance audit reports.

3. Performance audits involve close engagement between the ANAO and the audited entity as well as other stakeholders involved in the program or activity being audited. Throughout the audit engagement, the ANAO outlines to the entity the preliminary audit findings, conclusions and potential audit recommendations. This ensures that final recommendations are appropriately targeted and encourages entities to take early remedial action on any identified matters during the course of an audit. Remedial actions entities may take during the audit include:

- strengthening governance arrangements;
- introducing or revising policies, strategies, guidelines or administrative processes; and
- initiating reviews or investigations.

4. In this context, the below actions were observed by the ANAO during the course of the audit. It is not clear whether these actions and/or the timing of these actions were planned in response to proposed or actual audit activity. The ANAO has not sought to obtain assurance over the source of these actions or whether they have been appropriately implemented.

- The ATO commenced a pilot project in June 2021 to further improve the efficiency of the processing of employee notifications. Key changes included a differentiated approach for low-risk cases based on early engagement, and a significant reduction in the number of cases that proceed to audit (15 per cent).
- The ATO commenced a review of its Employer Obligations risk in June 2021.
- The web content for the annual SG gap estimate was updated on 19 October 2021, in line with usual practice, after the release of the Commissioner of Taxation Annual Report 2020–21 on 6 October 2021.
- A limited pilot compliance program is scheduled for 2021–22, targeting the café and fast-food industries; the pilot was included in a draft Risk Treatment Plan prior to the commencement of this audit.
- In the Superannuation Industry Stewardship Group meeting on 17 November 2021, there was discussion about the Superannuation Guarantee (SG) gap (following the annual publication of the gap figures in the ATO's annual report), the operation of SG clearing houses, and the most appropriate treatment of employers who are trying to do the right thing and how the ATO can avoid unfairly penalising them. Members supported further

discussion on SG matters and were invited to send specific questions or note areas of concern.

- At February 2022, the ATO is transitioning work practices from a three-month early engagement pilot for low-risk employee notification cases to business as usual.

## Appendix 3 Superannuation Guarantee Charge penalties

**Table A.1: Superannuation Guarantee Charge penalties**

Cause for penalty	Penalty name (where applicable)	Revenue remitted to Consolidated Revenue Fund
Late lodgement of Superannuation Guarantee (SG) Statement Failure to provide a Statement or information when requested during an audit	Additional Superannuation Guarantee Charge (also called the Part 7 penalty)	200 per cent of the Superannuation Guarantee Charge.
Underpayment of the Superannuation Guarantee Charge due to a false or misleading statement	Administrative penalty	Up to 75 per cent of the Superannuation Guarantee shortfall.
Avoiding superannuation obligations through arrangements		The charge avoided plus an additional penalty.
Failure to pay the Superannuation Guarantee Charge in full by the due date	Director penalty	Penalty equal to the unpaid amount.
SG Statement lodged but not paid by the due date	General Interest Charge (GIC)	7.01 per cent per annum October–December 2021. <sup>a</sup>
Failure to keep adequate records		Up to 30 penalty units (\$6660). <sup>b</sup> An additional administrative penalty of up to 20 penalty units (\$4440) may also apply.

Note a: GIC increases from the due date up to the date Superannuation Guarantee Charge is paid in full, compounding daily (tax-deductible in the year incurred). The GIC rate is updated quarterly at [https://www.ato.gov.au/Rates/General-interest-charge-\(GIC\)-rates/](https://www.ato.gov.au/Rates/General-interest-charge-(GIC)-rates/).

Note b: The value of penalty units is as at December 2021.

Source: ANAO analysis.

## Appendix 4 Superannuation Holding Accounts Special Account

1. The age of the funds held in the Australian Government's Superannuation Holding Accounts Special Account as at 30 September 2021 is shown in the table below. The ATO advised the ANAO that funds can remain in the Special Account for up to ten years, after which they are transferred to the Consolidated Revenue Fund.

**Table A.2: Age of funds in Superannuation Holding Accounts Special Account, as at 30 September 2021**

Period in Special Account	Amount (\$)
Less than a year	11,586,690
1 year	6,816,824
2 years	2,690,739
3 years	15,179,197
4 years	7,351,052
5 years	18,359,864
6 years	197,800
7 years	2,651,523
8 years	1,300,941
9 years	772,184
10 years+	8,007,772
<b>Totals</b>	<b>74,914,587</b>

Note a: The Special Account includes four types of funds: Superannuation Guarantee; co-contributions; Low Income Super Tax Offset/ Low Income Superannuation Contributions; and pre-2006 employer deposits to the Superannuation Holding Account Reserve.

Source: ATO.

2. The ATO advised the ANAO that remedies to improve the proportion transferred from the Special Account into employees' superannuation funds include use of myGov and bulk mailouts.<sup>92</sup>

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92 myGov is an Australian government portal that allows users to access multiple government online services — including the ATO, Centrelink and Medicare — through one website.