SUPER MEMBERS COUNCIL

August 2024

Fixing unpaid super: Making super fairer for workers and employers alike

Executive summary

Australia's almost $4 trillion superannuation system is one of the most effective retirement schemes in the world. It covers around 90 per cent of employees, with median balances of around $200,000 for workers nearing retirement.

With this success also comes a responsibility to keep improving super, ensuring its benefits are enjoyed by as many Australians as possible.

Currently, too many Australians are not paid their legal super entitlements. This denies millions of Australians the full benefits of our transformational system of retirement income.

Unpaid super is when a worker receives less than their full superannuation entitlement on time or is not paid their super at all – either unintentionally or deliberately.

A systemic issue, it affects one in four Australian workers.

Super Members Council (SMC) modelling shows that:

- in one year, 2.8 million Australians missed out on $5.1 billion in legal super entitlements (2021-22)
- over 9 years, Australians missed out on $41.6 billion
- the average affected worker missed out on $1,800 in super in a year – which can mean more than $30,000 less in retirement savings for a typical worker, and
- the problem is getting worse with Australians losing more money at a higher average.

SMC analysis also shows those in insecure work, lower-income earners, migrants, and younger workers are most likely to be affected. Relatively lower paid women are acutely affected. Workers in these groups often face broader inequities, which can be exacerbated and extended to retirement if they are not paid their super.

But it's not just employees who suffer. Unpaid super creates an unfair playing field for business, with employers who pay their workers' entitlements on time and in full undercut by those who don't.

A key driver of unpaid super is that payments of super are misaligned with payments of wages.

The Australian Government has committed to introducing a payday super scheme. This reform can significantly reduce the scale and impact of the unpaid super scourge.

A great example of member-focused super policy, the change will modernise the system and is expected to drastically reduce underpayments, making it fairer for workers and employers alike.

What's needed now?

The Government's policy commitment now needs to be backed by legislation, and quickly, to lock in payday super, passed in this term of Parliament.

With a proposed start date of 1 July 2026, workers and businesses need certainty that the commitment is backed by the right model, policy detail and timings.

SMC stands ready to work with the Government and key stakeholders to ensure the legislation is brought forward quickly and delivers on its intention.

In addition to payday super legislation, the Government should also establish a stronger Australian Tax Office (ATO) compliance regime that includes setting the originally promised targets and measuring their progress. The Government should also commit to supporting workers to seek compensation for their legal super entitlements in the case of insolvency.

Effective legislation backed by a robust compliance regime is the only way to ensure millions more Australians get their full super entitlements.

Curbing unpaid super will make a meaningful difference to the retirements of millions of Australians.

There is an obligation for policymakers and the industry to work to ensure every Australian is paid their entitlement on time and in full.

This will add further trust and confidence that super is working 'fairly and squarely' for everyone.

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About the Super Members Council

We are a strong voice advocating for more than 11 million Australians who have over $1.5 trillion in retirement savings managed by profit-to-member superannuation funds. Our purpose is to protect and advance the interests of super fund members throughout their lives, advocating on their behalf to ensure superannuation policy is stable, effective, and equitable. We produce rigorous research and analysis and work with Parliamentarians and policy makers across the full breadth of Parliament.

Introduction

This report highlights what's at stake in fixing unpaid super and provides policy detail to ensure the super owed to Australian workers is paid to them on time and in full.

In May 2023, the Government made a commitment that from 1 July 2026, employers will be required to pay their employees' super at the same time as their salary and wages. When implemented, this reform will make it easier for workers to keep track of payments and for the ATO to monitor compliance. The Government also announced more funding for the ATO to improve unpaid super recovery rates and set new targets the ATO must report on to better track the timeliness of the ATO's unpaid super recovery efforts and the level of recoveries returned to members. Implemented swiftly and with the right policy detail, these commitments will go a long way to fixing the problem.

The issue of unpaid super remains systemic and growing

This report sets out the latest data on unpaid super, drawn from the ATO (the ATO's 2 per cent sample file – a sample of deidentified unit records). It shows the scale and impact of unpaid super at a system and individual level, and how it affects workers of different ages, genders, and occupations.

Unpaid super is when an employee is paid less than their full super entitlement or not paid super at all. Under the law, employers must contribute at least 11.5 per cent of their employee's earnings.

The $3.9 trillion super system is delivering stronger financial security in retirement to millions of Australians, but the success of the system to deliver the strongest possible retirements rests on employers paying their workers' super contributions on time and in full.

This is not always the case, and this report examines the major drivers of unpaid super – including poor payroll management, insolvency, and deliberate wage theft.

But the key driver of unpaid super is the lack of visibility of payments for workers as super is not required to be paid with wages. As it stands now, super can legally be paid once a quarter.

The scourge of unpaid super is growing – with Australians losing more money in total and on average.

Unpaid super affects one in four workers, with $5.1 billion going unpaid in 2021-22 and an average underpayment of $1,800.

Workers on lower incomes are more likely to be affected – including young people in casual employment, women in low-paid, feminised industries, and migrant or newly arrived workers – exacerbating existing inequalities these groups can face.

The underpayment of super entitlements can lead to workers having $30,900 less at retirement, increasing reliance on the taxpayer funded age pension.

Employers also suffer consequences from unpaid super, with those employers who pay employees their full entitlements at risk of being undercut by those who do not.

Importantly, unpaid super risks eroding confidence in the super system and its ability to provide the strongest retirement for millions of Australians.

Government responses to unpaid super

Despite the ramifications, successive governments and regulators attempts to address the problem have had mixed results and only been partially effective (see Appendix A for a history of previous government measures that have been implemented).

We welcome the current Government's commitment to introducing a payday super scheme – a change that has the potential to significantly reduce the scale and impact of the unpaid super scourge.

However, the requisite legislation is yet to be revealed, including the details of how this policy will be implemented and over what timeline.

SMC's recommended next steps

A suite of measures is needed in combination to drastically curb the unpaid super problem:

1. **Implement payday super** in full and on time, underpinned by strong, meaningful legislation.

   The Australian Government must ensure its commitment is enacted in legislation and passed in this term of Parliament. This will allow the ATO, businesses and super funds can prepare for a smooth transition before it is implemented on 1 July 2026.

2. **Improve the enforcement regime** with a more proactive approach, stronger penalties and full use of the ATO's digital capabilities.

– Set targets for the ATO on the amount unpaid super recovered, and track progress by regularly measuring the unpaid super gap.
– Set targets for the ATO on proactive compliance by measuring the amount of enforcement actions resulting from proactive investigations through ATO data matching.
– Make greater use of Part 7 penalties for intentional or systematic non-compliance, as well as imposing criminal penalties under wage theft legislation where applicable.

3. **Extend the Fair Entitlements Guarantee,** the Government should include super in the workers compensation scheme of last resort in cases of insolvency.

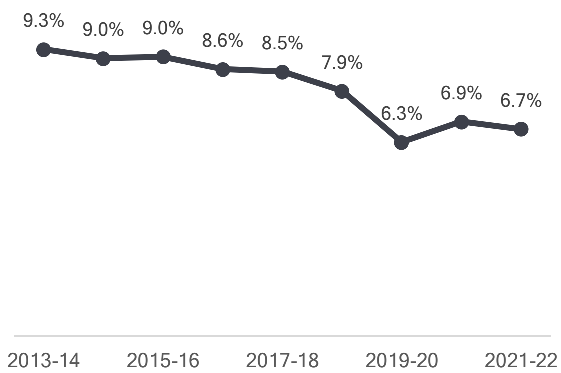
The size of the problem

While the majority of employers comply with their obligation to pay the superannuation guarantee, non-compliance by some employers leads to a large pool of unpaid super. This limits the ability of Australia's world-leading super system to deliver the strongest retirement for millions of Australians.

SMC analysis shows that, in 2021-22, the most recent year for which data is available, the total amount of unpaid super was $5.1 billion. While unpaid super as a share of total SG obligations has declined in recent years, in dollar terms the problem is not going away – rather, it is growing (figure 1).

Figure 1. Total amount of unpaid super by financial year

Figure 2. Unpaid super as percentage of total SG base by financial year



Source: SMC analysis of ATO 2 per cent sample file, 2013-14 to 2021-22

In 2021-22, unpaid super averaged $1,810 per affected worker and affected around a quarter of all employees. Despite various government interventions over time to address unpaid super, there has been very little change in the number of employees affected (Figure 3).

Figure 3. Number of individuals underpaid their full super entitlements by financial year

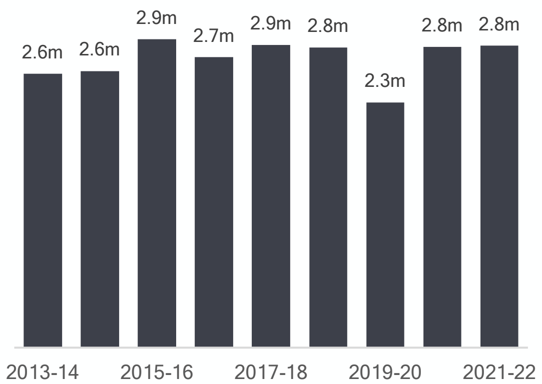
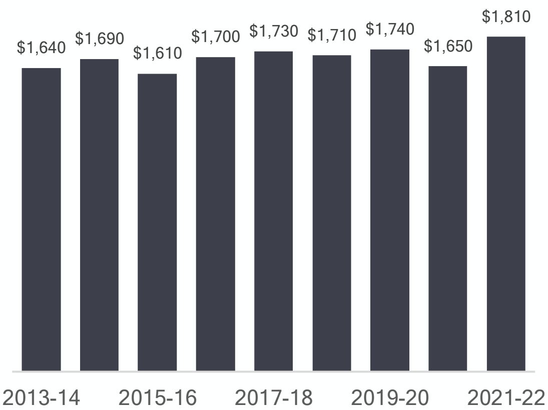


Figure 4. Average underpayment per affected worker by financial year



Source: SMC analysis of ATO 2 per cent sample file, 2013-14 to 2021-22

The data also shows it is the lowest paid workers who are more likely to be affected and either underpaid or not paid their super entitlements. Almost half of employees earning up to $25,000 are not paid their legal super entitlements and around 30 per cent of those earning between $25,000 and $50,000 are also affected (Figure 7). Lower paid workers are likely to face existing inequities, which unpaid super risks exacerbating and extending into their retirement.

Age and gender

Younger Australians are more likely to be affected by unpaid super - with 31 per cent or almost one in three workers in their 20s, and 28 per cent in their 30s, affected in 2021-22. With around three-quarters of super at retirement expected to be from compound returns, missing out on super early in life deprives these younger workers the full benefit of decades of compounding returns.

Australians over 60 approaching retirement are also more likely than average to have unpaid super, at 28 per cent. Many older Australians' primary reason for working beyond 60 years of age is because they cannot afford to retire. Unpaid super is arguably delaying their retirement.

Figure 5. Percentage of affected workers and mean underpayment by age, 2021-22

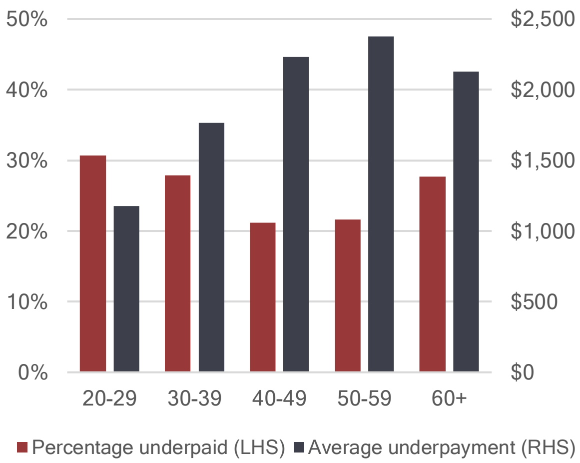
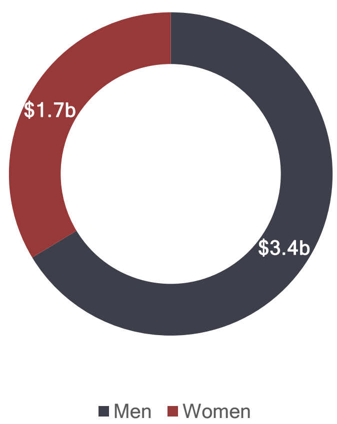


Figure 6. Value of underpayments by gender, 2021-22



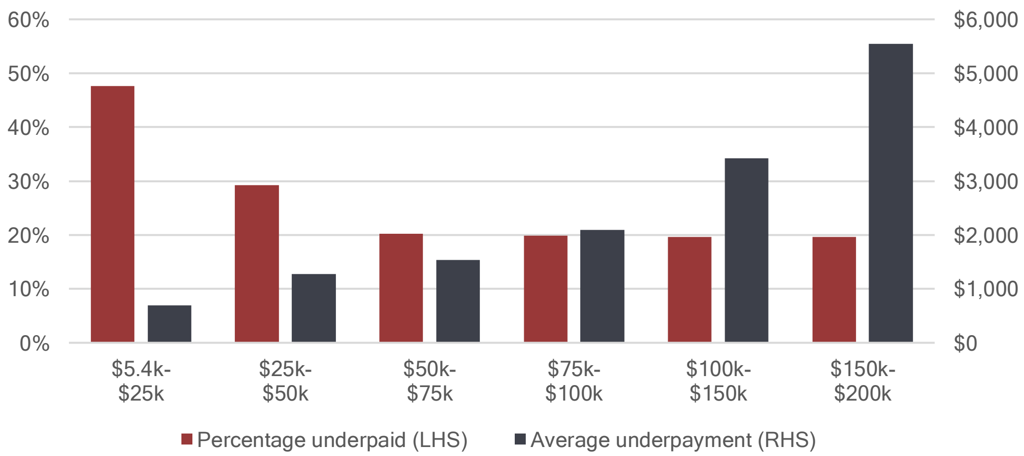
Source: SMC analysis of ATO 2 per cent sample file, 2021-22.

Men comprised 56 per cent of affected workers in 2021-22, meaning 1.6 million men missed out on $3.4 billion in unpaid super. Men are more likely to be affected, and by a greater amount in aggregate, because they are more likely to work in industries and occupations which have higher rates of underpayment and on average earn more money than women.

About 1.3 million women missed out on $1.7 billion in unpaid super. However, the impact on women is often more acute as they tend to have lower balances and experience other workplace inequities which compound with the impacts of unpaid super, reducing their savings at retirement.

People on lower incomes are more likely to be underpaid on their super than those earning higher incomes (Figure 7). In 2021-22, 48 per cent of people earning under $25,000 – almost half - were underpaid on their super, compared to 29 per cent of those earning between $25,000 and $50,000. 52 per cent of those aged 20-29 and earning under $25,000 were underpaid $600 on average – over a third of their super entitlements.

Figure 7. Percentage of affected workers and mean underpayments by wage, 2021-22



Source: SMC analysis of ATO 2 per cent sample file, 2021-22

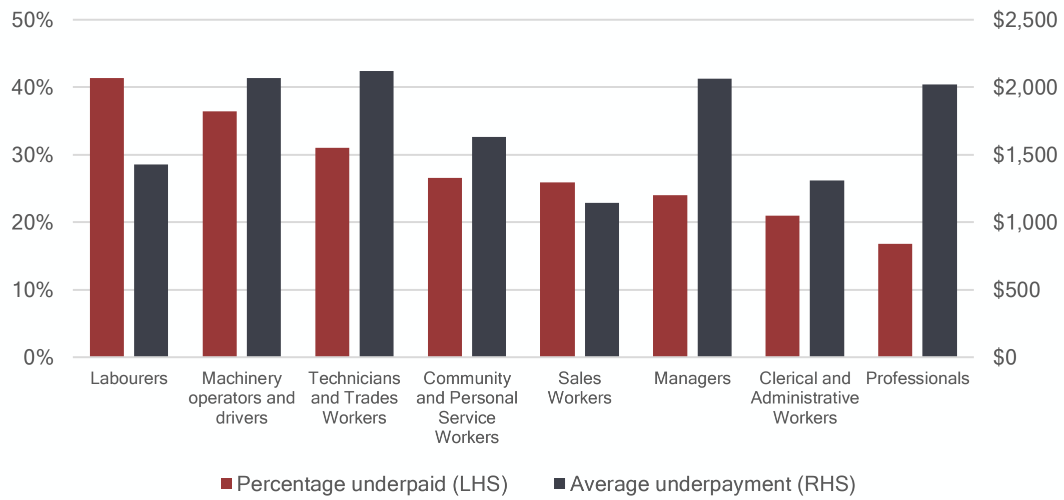
Industries and occupations

Unpaid super occurs more frequently in industries with lower wages and less stable work patterns.

In 2021-22, blue-collar workers in construction, trades, and transport were the most likely to miss out on super. A staggering 41 per cent of labourers had unpaid super, closely followed by machinery operators and drivers at 36 per cent, and technicians and trade workers at 31 per cent. These coincide with industries which experience higher rates of business insolvencies, where unpaid super is common.

The ATO has also identified the retail trade and accommodation food services industries to be in the top three high-risk industries alongside construction in recent years.[1]

Figure 8. Percentage of workers affected and average underpayment by occupation, 2021-22

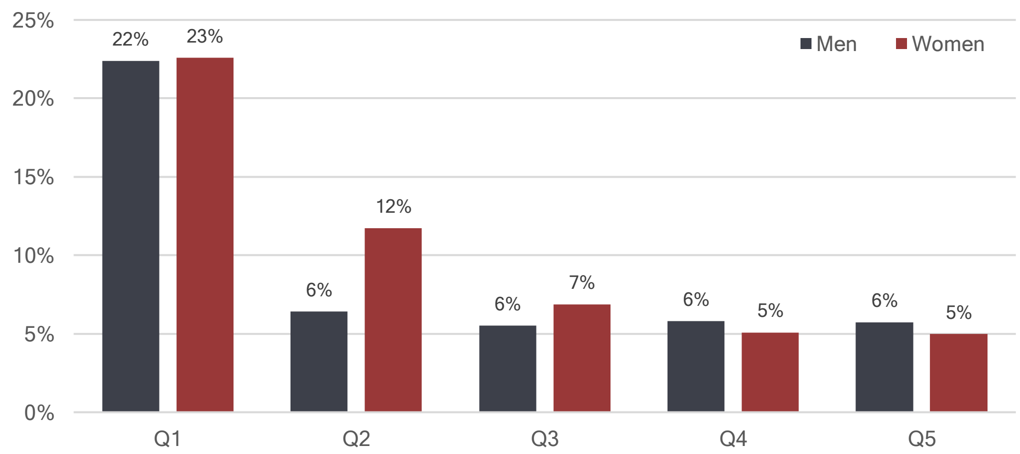


Source: SMC analysis of ATO 2 per cent sample file, 2021-22.

Impact at retirement

The effect of unpaid super entitlements compounds over time to significantly reduce the balances of Australians at retirement (Figure 9). The median individual being underpaid super is estimated to miss out on 6 to 7 per cent of their super balances at retirement – this amounts to around $26,000 for women and $36,000 for men. The typical unpaid worker in the lowest 20 per cent of wage earners could miss out on $35,000 at retirement – over a fifth of their balance.

Figure 9. Projected boost in retirement savings as a percentage of final balance by wage quintile



Source: SMC cameo analysis based on analysis of ATO and Survey of Income and Housing data.

[1] 'Addressing Superannuation Guarantee Non-Compliance', Australian National Audit Office, 2022, page 33.

Key drivers of and solutions to unpaid super

Key drivers

Business practices

Most businesses pay their workers super entitlements on time and in full, but there are still millions of cases every year where super goes unpaid due to poor business practices. Most of these are unintentional - a result of poor administration including payroll mistakes and poor cashflow management. But there are also cases of deliberate wage and super theft, with many cases involving insolvencies.

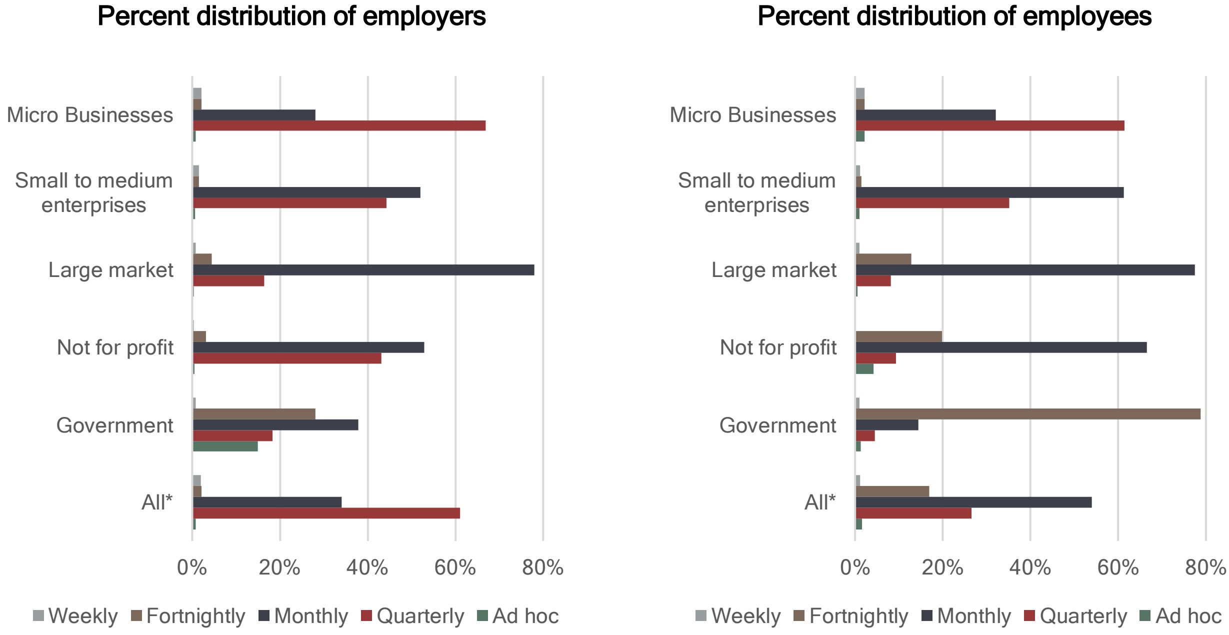
Despite the proliferation of digital payroll systems which help businesses manage payroll, super is still often paid less frequently than wages - enabled by outdated regulation which only requires super to be paid at least quarterly. ATO data shows a quarter of employees are paid their super quarterly and half are paid monthly, while just under a fifth are paid fortnightly (Figure 10).

This lag time in payments (relative to wages) is a key handbrake on the ATO's ability to effectively recover unpaid super. Commissioner of Taxation, Chris Jordan AO, addressed this issue while giving evidence to the Senate Standing Committee on Economics in 2022, saying:

> *"…there are some structural issues around timing of payments and timing of reporting of information that inevitably go towards contributing to that tax gap (SG gap) figure."*[2]

In 2020-21, around 60 per cent of employers were paying super quarterly (Figure 10). This result was driven by micro businesses, with two thirds of employers within the market segment paying super quarterly and only a third paying super more frequently. Around 80 per cent of large businesses paid super monthly, along with half of small to medium enterprises. Across all market segments, around half of employees were being paid super monthly and only a quarter quarterly. As well as commonly paying super on a quarterly basis, micro and small businesses tend to show higher levels of SG non-compliance than other market segments.[3]

Figure 10. Frequency of employer SG payments by market segment



Note: *All market segments total excludes Personal Taxes category and entities with unknown segment information.
Source: Senate Economics Legislation Committee, 2021-22 Supplementary Budget Estimates, QON SBT130, November 2021.

Some businesses use their workers' super entitlements to manage cashflow, leaving them a big bill at the end of each quarter. In many cases, this leads to super being paid late, being underpaid, or not being paid at all. Quarterly super payment creates extra administrative burden from time-consuming reconciliations, which can be prone to errors leading to incorrect payments.

In cases of business insolvency, workers may not be able to recover their entitlements – and super is often last in line after wages and business debts. ASIC data shows that in 2022-23, 45 per cent of

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[2] Hansard, Senate Economics Legislation Committee, Wednesday 16 February 2022, page 62.

[3] 'Addressing Superannuation Guarantee Non-Compliance', Australian National Audit Office, 2022, page 33.

insolvency cases involved unpaid super, while only 15 per cent involved unpaid wages.[4] While cases involving unpaid super increased from 41 per cent in 2021-22, the cases involving unpaid wages decreased from 17 per cent[5] – a widening gap indicating that action on unpaid super is lagging behind other workplace entitlements.

Additionally, super cannot be claimed under the Fair Entitlements Guarantee (FEG), which is an Australian Government compensation scheme of last resort compensating workers for their other workplace entitlements, such as wages, leave and redundancy pay in the case of business insolvency. SMC recommends the FEG be extended to cover superannuation.

Low awareness and payments visibility for members

The superannuation regulatory environment is complex, and many workers do not fully understand how and when their super is paid, or what their legal entitlements are. This leads to many cases of unpaid super going undetected for a long time, or never being detected at all.

Payslips can add to the confusion. Super is often listed on a payslip like wages, and many workers naturally assume their super is being paid into their account at the same time as their wages, despite it being paid quarterly. The amount of super included in the payslip is the amount that should be paid, but it may not match what has - or hasn't - been paid, nor indicate when it will be paid. This highlights the importance of legislating payday super swiftly to ensure Australians can have confidence their super is being paid with their wages – consistent with their payslip.

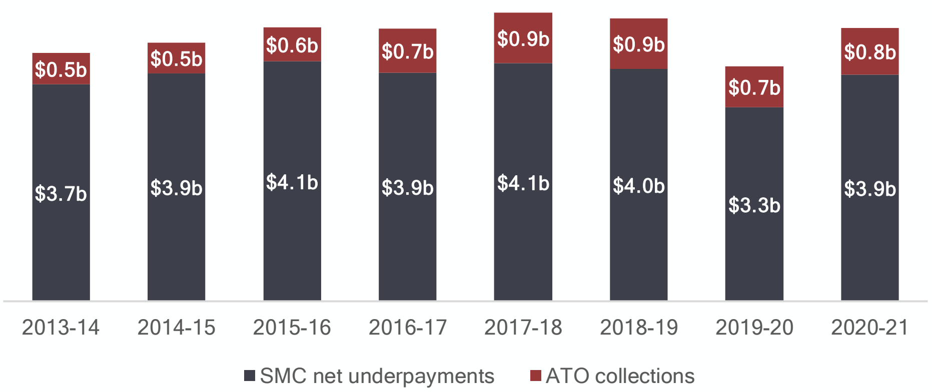
Add to that the fact that the majority of unpaid super is in the form of underpayments, as opposed to non-payment. This makes it even more difficult for workers to identify if they are not receiving their entitlement, given many workers will see payments being made but may not realise they are lower than legally required.

Ineffective enforcement and low recovery

Ineffective enforcement and deterrence have also played a contributing role to the unpaid super problem. The ATO only recovers a fraction of the total of unpaid super each year.

The proportion of unpaid super recovered is slowly improving, however remains abysmally low. Around 17 per cent, or less than $1 billion, of the $4.7 billion SG entitlements unpaid in 2020-21 were recovered, up from an average recovery rate of 12 per cent of entitlements unpaid during 2013-14 to 2015-16 (Figure 11).

Figure 11. ATO unpaid super collections and net underpayments by financial year



Source: SMC analysis of ATO 2 per cent sample file, 2013-14 to 2020-21, and ATO Superannuation guarantee gap, Latest estimates and trends, 2022 to 2023.

ATO enforcement practices have been insufficient to detect and remedy unpaid super for millions of Australians. In 2022, an Australian National Audit Office (ANAO) report into Super Guarantee non-compliance determined that the ATO's use of the framework was only 'partially effective'.

In 2020-21, the ATO issued 9,594 Part 7 Penalties for unpaid super, but only 4,124 (43 per cent) of these required the business to pay a penalty above remediation of the unpaid amount. Of these, only

[4] Insolvency statistics, External administrator reports, Australian Securities & Investments Commission, 2022-23.

[5] Insolvency statistics, External administrator reports, Australian Securities & Investments Commission, 2021-22.

37 (less than 1 per cent) attracted the maximum 200 per cent penalty.[6] The burden of reporting unpaid super continues to rest on the shoulders of affected workers, whose reports account for 78 per cent of recoveries.

Automated detection of unpaid super also remains low, with the ATO largely relying on reports from workers. The ANAO found that from 2017-18 to 2020-21, only 22 per cent of recoveries were a result of proactive ATO investigations and only 10 per cent in 2020-21 alone.[7] This is despite the introduction of Single Touch Payroll system, which allows the ATO to monitor payments in real time.

Workers in insecure employment and people without a deep understanding of workplace entitlements in Australia, such as many workers from culturally linguistically diverse backgrounds, are far less likely to make reports, leaving them at greater risk of having their underpayments go undetected.

It's vital the ATO is set and held to meeting robust recovery targets on unpaid super. These targets should also encourage more proactive enforcement activity, instead of an over-reliance on reports from workers.

Solutions

Implement payday super in full and on time

The Australian Government's commitment to implementing payday super from 1 July 2026 should go a long way in reducing the prevalence of unpaid super. Payday super reforms should also simplify the system for workers and help businesses better manage their cashflows and super payments.

Table 1. Government commitments and SMC recommendations for effective payday super implementation

Commitment	SMC's recommendations to ensure effective implementation
1 July 2026 implementation date	The Government must deliver payday super in full and on time by 1 July 2026 to address the scourge of unpaid super, and deliver the benefits of payday super to members, as soon as practicable. Strong, comprehensive legislation must be passed in this term of Parliament to ensure regulators, businesses and super funds have the necessary time to consult and prepare for the transition.
Thorough consultation period	The Government and ATO must conduct a thorough and timely consultation period with businesses and super funds of all sizes to ensure a smooth transition, and that the payday super scheme reflects the industry landscape. Legislation must be passed in this term of Parliament to allow adequate time for thorough consultation.
Improve ATO resourcing to detect unpaid super earlier	The ATO will need additional resources to improve its unpaid super compliance regime after payday super is implemented. The Government must adequately resource the ATO to improve its capability to detect unpaid super earlier through STP data matching, and conduct proactive enforcement actions.
Enhanced targets for recoveries	The Government must set stringent targets for the ATO to increase - the amount of unpaid super ('the SG gap') recovered for members - the proportion of recoveries from proactive ATO investigations. The ATO must publish and track its progress against its targets in its annual reports to ensure the compliance regime meets community expectations.

[6] 2021-22 Budget Estimates, Treasury portfolio, Australian Tax Office, Question on notice number 230. 2020-21 figures cover the period of 1 July 2020 to 31 May 2021.

[7] 'Addressing Superannuation Guarantee Non-Compliance', Australian National Audit Office, 2022, page 44.

What's at stake

The individual financial benefits of payday super are significant. SMC analysis shows the average worker would be $7,700 better off in retirement if their super was paid with their wages instead of quarterly because the returns accrue and compound sooner.

Almost 13 million Australians could benefit from more frequent payments, with about 4.2 million Australians paid super once a quarter and a further 8.5 million paid monthly.

Workers need to see this commitment implemented effectively and on time, underpinned by comprehensive legislation, passed in this term of Parliament.

Implementing payday super will benefit workers, businesses and regulators:

- With the near-universal use of digital payroll systems, paying super with wages will streamline businesses' ability to manage cashflow and payments without additional administrative burden.
- Workers will be better able to know when their super is paid and identify when it hasn't been.
- More frequent payments will result in higher balances for members – the average worker would be $7,700 better off in retirement if paid super with wages instead of quarterly.
- Allow the ATO to identify and rectify underpayments sooner – leading to more super being returned to Australians sooner.
- The ATO will have more tools and resources available to identify instances of unpaid super and take enforcement action.

Addressing potential implementation challenges

There are potential challenges that may arise in the implementation of payday super. These must also be addressed to ensure a smooth transition and that the policy intent is met.

Table 2. Challenges and solutions to ensure the success of payday super

Responsibility	Challenge	Solutions
Data quality: ATO, businesses, super funds	The quality of data reported to and maintained by the ATO must be accurate to ensure unpaid super is detected, and any compliance activities are appropriate. Currently, 1.6 per cent of super payment reports made through the SuperStream gateway network have inaccuracies[8], and as payday super will mean more frequent payments, inaccuracies must be minimised to ensure the problem does not compound.	Thorough consultation and dialogue between the ATO, businesses and funds in the consultation and transition process to ensure all stakeholders are on the same page with data reporting. Through this consultation process, the ATO should develop an effective reporting process, and a simple method for rectifying errors. The ATO should undertake adequate business education before the implementation date to ensure businesses have the resources needed to comply.
Employer obligations: Businesses, ATO	Payday super will mean new obligations on businesses, and these obligations for paying super and reporting data must be clear to ensure businesses are equipped to comply from day one.	Through the consultation and transition process, the ATO should develop obligations that are clear for businesses and meet industry expectations. These obligations must be clearly advertised as part of a business education program before the implementation date. Businesses will be responsible for understanding and complying with obligations from 1 July 2026.
Penalty regime: ATO, Fair Work Ombudsman	The penalty regime must be reviewed to reflect the new obligations, and the ongoing seriousness of the unpaid super problem. As gross unpaid super and the number of workers affected continue to rise, penalties must be reviewed to provide an adequate deterrent against intentional non-compliance.	The ATO should conduct an internal review into its current penalty regime, and what areas can be improved to better deter non-compliance. Through consultation with stakeholders, this regime should be updated to reflect the new requirements, ensuring appropriate penalties

[8] SuperStream overview, ATO, June 2024.

	Penalties must also reflect the new obligations which will require more frequent payments.	are available to the ATO for non-compliance with more regular payments. Intentional, systematic, and frequent non-payment of super should attract harsher penalties to deter egregious non-compliance. The Fair Work Ombudsman must also apply criminal penalties where applicable under the law, as super theft is now a criminal offence.
Public awareness: ATO, businesses, super funds, members	Payday super will mean new rules for how members' super is paid, and their awareness of these rules will improve trust in the super system and help them detect when their super is not paid. The current complexities of how super is paid means awareness is relatively low, and this must be improved through public awareness initiatives when the rules change.	The Government should fund an ATO-run public awareness campaign educating members on how super will be paid, and how to check their super entitlements are being paid on time and in full. Businesses and super funds should educate workers and members on these changes and promote any awareness campaigns.

Improve enforcement

New guidelines for the ATO on unpaid super enforcement are required to ensure appropriate penalties are given where businesses systematically, intentionally, or negligently underpay or do not pay super entitlements to their workers. This type of deliberate underpayment can also be prosecuted under wage theft laws.

But current enforcement actions have proven to be an insufficient deterrent. New guidelines should also require the ATO to undertake a more active enforcement regime, with regular monitoring of payments based on data provided to the ATO by businesses through the STP framework, and proactive investigation of suspected cases.

The ATO should also work more closely with super funds, many of which have successfully implemented arrears programs which identify and follow up super non-payments. A more collaborative reporting regime between funds and the ATO could help identify more cases of unpaid super.

In the 2023-24 Federal Budget, the Australian Government announced new targets around the timeliness and effectiveness of the ATO's compliance activities. These will go some way to being able to monitor the effectiveness of the ATO's compliance activities to return more unpaid super to members. SMC recommends the ATO sets robust compliance targets that are publicly released, and regularly monitors their effectiveness.

Setting robust recovery targets for the ATO will lift enforcement and recover more money for Australians. These targets should also encourage the ATO to shift from mostly relying on workers reporting unpaid super to a more proactive enforcement.

Extend the Fair Entitlements Guarantee

The Fair Entitlements Guarantee is an Australian Government compensation scheme of last resort which allows eligible workers to claim compensation for unpaid wages, leave, redundancy pay and other entitlements in the case of business insolvency. Super is currently not able to be claimed. The Fair Entitlements Guarantee should be extended to ensure that all entitlements, including super, are equally eligible to be claimed. This change would reduce the amount of unpaid super caused by insolvencies – one of the major contributors.

Conclusion

Unpaid super is a systemic issue. It costs one in four Australian workers a total of $5.1 billion in a year. Its impact is most keenly felt among many of the Australian workforce's more vulnerable groups - younger Australians on lower wages, people in insecure work, lower-paid women, and migrant workers – which risks exacerbating existing inequities.

Previous government efforts to fix the challenge of unpaid super have had limited success, with the amount of super not paid annually largely remaining static.

The Australian Government has made important commitments that will address unpaid super including tougher sanctions, ATO recovery targets and importantly the shift to mandate that super is paid with wages – rather than quarterly. These commitments need to be enacted swiftly.

Payday super reforms will remove a system glitch that denies too many Australians the transformative benefits of super. It is a positive change that will benefit millions of Australians.

This vow to modernise the super payments system and align super contributions with wages will:

- allow the ATO to better monitor super payments in real time
- give greater visibility to workers to monitor payments and detect underpayments, and
- remove the burden of time-consuming quarterly reconciliations on business – while helping smaller businesses avoid large unpaid super liabilities at the end of each quarter.

SMC strongly recommends this change should be legislated within this term of Parliament and enacted on time and in full.

Payday super unlocks a more robust and proactive compliance regime. To date, an effective compliance deterrent has been sorely lacking. The Australian Government should swiftly set the ATO unpaid super recovery targets. These targets should also force the regulator to shift from relying largely on worker's reporting unpaid super to a more proactive enforcement model.

In cases of insolvencies, there is often little recourse for workers to recoup unpaid super. Including super in the Fair Entitlements Guarantee – a compensation scheme of last resort for workers in cases of insolvencies – will give workers a much-needed safety net.

Legislating and enacting payday super, setting ATO unpaid super recovery targets and including super in the Fair Entitlements Guarantee will make the system fairer and more equitable for employers and employees alike.

These measures will unlock super's transformative benefits for millions of Australians and move the system a step closer to delivering on its promise of a financially secure retirement for all Australians.

Appendix A: Major investigations and policies

Table 3. Major investigations and policy changes addressing unpaid super by year

Year	Event	Key points
2015	'Promoting Compliance with Superannuation Guarantee Obligations' ANAO report	In this report, the ANAO found: - the ATO's administration of the SG scheme was generally effective, but the ATO needed to develop a greater understanding of non-compliance across industries and groups who were more greatly affected, and - the ATO should implement more effective strategies to better analyse non-compliance, better coordinate its compliance activities and evaluate its own effectiveness.
2017	Inspector-General of Taxation inquiry into Superannuation Guarantee non-payment	In this report, the Inspector-General found: - the accuracy and timeliness of data is crucial to detecting and remediating unpaid super - the ATO relies heavily on reports from affected workers, and should expand proactive compliance activities, and - there should be further legislative consideration to whether the penalties for non-compliance are adequate.
	Senate Economics References Committee inquiry into Superannuation Guarantee non-payment	The Committee found: - SG non-compliance ('the SG gap') should be more accurately and frequently estimated - the ATO should move to a more proactive compliance regime - the SG Charge framework, which relies heavily on business self-reporting, should be reviewed, and - the Government should consider mandating that super contributions are made more frequently, ideally with wages.
2018 to 2020	Superannuation Guarantee amnesty	The SG amnesty: - gave businesses who had not made SG payments between 1 July 1992 and 31 March 2018 the opportunity to avoid administration charges and Part 7 Penalties by reporting and paying the missed entitlements - received reports of $911.5 million in unpaid super, recovering over $850 million for members, and - saw 28,300 businesses self-report, 70 per cent of which were small businesses with under $2 million in turnover.
2018 to 2022	Implementation of the Single Touch Payroll reporting framework (STP)	The introduction of the STP: - required businesses to transition to a new payroll reporting framework where they must report information about their workers' wages, withheld tax and super liabilities to the ATO - was completed in 2022, where all businesses were transitioned into the STP framework - was aimed at providing the ATO with rich, up-to-date data on workers' entitlements, including their super, and - was considered part of the solution to addressing unpaid super by providing the information the ATO needs for timely, proactive enforcement.
2022	'Addressing Superannuation Guarantee Non-Compliance' ANAO report	In this report, the ANAO found: - the ATO's compliance activities remain largely reactive, reducing their effectiveness - measures to transition to a risk-based preventative approach had only been implemented in part, and - the ATO should make greater use of its enforcement and debt recovery programs, and track its performance and effectiveness.
2023	The Australian Government announces commitment to implementing payday super	The Government's commitment to payday super: - will require businesses to pay super at the same time they pay wages - is aimed at addressing the problem of unpaid super - will take effect on 1 July 2026, and - will involve a period of stakeholder consultation and an adequate preparation period.

Appendix B: Methodology

SMC uses a bottom-up approach to estimating unpaid superannuation at a national level, using the Australian Taxation Office (ATO) 2 per cent confidential unit record files. These files contain detailed information on both personal income taxes and superannuation contributions. The broad methodology is as follows:

1. Isolate records in the ATO dataset for people who should receive the super guarantee
2. Remove from this group potential defined benefit members to avoid counting these individuals as being underpaid
3. Create an estimate of ordinary time earnings (the superannuation guarantee base) from the salary and wage data on the ATO individual tax return for those remaining, and adjust for the maximum superannuation guarantee contribution base, and
4. Adopt conservative cut-outs for apparent underpayments which provide a margin of error for the imprecision in the overtime adjustment, and which allows for the lagged quarterly payment of the super guarantee.

The superannuation guarantee population

To isolate the superannuation guarantee population, we exclude:

1. People who are under 20 years of age, which is as close to under 18 as the data allows
2. Those with salary and wages under $5,400 as an approximation for the $450 per month super guarantee threshold,[9] and
3. People who look like they may be members of defined benefit schemes.

The records on the ATO file represent 15.5 million tax filers in 2021-22. The exclusions noted above reduce the super guarantee population represented in this analysis to 10.9 million individuals.

Defined benefit members

The ATO 2 per cent confidential unit record file does not contain information that would allow us to identify defined benefit members. However, the ATO's ALife website[10] does publish information on the number of taxpayers reporting 'Notional taxed contributions' and 'Defined benefits contributions' which are used for calculating excess contributions tax and Division 293 tax for defined benefit members. We use this information, along with some additional aggregate information provided by the ATO on the state, age and income distribution of these members, to remove sufficient records from the 2 per cent file to account for defined benefit members.

We assign a likelihood that a record may be a defined benefit member based on whether they have no (or low) mandated employer contributions as defined in the next section, their occupation, and their observed non-concessional contribution rates (certain schemes such as the Public Sector Superannuation Scheme require member contributions of between 2 and 10 per cent). We then rank records based on this likelihood and remove the required number of records to hit aggregate state, 5-year age band, and broad wage band benchmarks.

Employer contributions

The Member Contribution Statement (MCS) portion of the ATO 2 per cent sample file aggregates all employer contributions, both voluntary salary-sacrifice contributions and those covered by the superannuation guarantee and enterprise agreements, into a single field. However, the individual tax return portion of the file has a separate field for salary-sacrifice contributions based on reportable employer superannuation contributions provided by employers on payment summaries. This allows us to calculate superannuation contributions covered by the superannuation guarantee and enterprise agreements, which we denote as mandated employer contributions to differentiate these from employer contributions that are inclusive of voluntary salary sacrifice contributions.

Prior to 1 January 2020, it was legal for employers to use salary sacrifice contributions to meet superannuation guarantee obligations. Although legal during a large portion of the period of analysis, it is morally questionable for employers to do so as this results in a reduction in an employee's total remuneration – most likely without their knowledge. For this current analysis, we use mandated employer contributions, defined as employer contributions minus salary sacrifice contributions, in the numerator when calculating the superannuation guarantee rate.

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[9] The Australian Government removed the $450 per month threshold for SG eligibility from 1 July 2022. The latest tax data is for the 2021-22 financial year where this threshold was still in place.

[10] https://alife-research.app/

Estimating ordinary time earnings from the ATO salary and wage data

The minimum superannuation obligations an employer must pay on behalf of their employee is based on their ordinary time earnings (OTE), up to the maximum super contribution base. The ATO guidelines to employers for calculating ordinary time earnings can be found on the ATO's website[11].

The main thing to note for our purposes is that the following payments are included in salary and wages in the individual's tax return, but are not included in OTE for the purposes of calculating superannuation entitlements:

- Overtime hours over and above the ordinary hours stated in an award or agreement
- Casual employee overtime payments
- Bonuses and annual leave loading in respect of overtime, and
- Termination payments for unused annual leave, long service leave or sick leave

Annual estimates of OTE data for employees. It is therefore necessary to estimate this based on salary and wages as reported in the individual's tax return.

The current methodology uses pooled data from the 2015-16, 2017-18 and 2019-20 ABS Surveys of Income and Housing to construct estimates of the wedge between ordinary time earnings and salary and wages for wage earners. We then estimate a Probit model of the probability of an individual having an OTE wedge based on the log of their real wage, the ratio of superannuation contributions to gross wage, and their occupation at the 1-digit level to be consistent with the ATO data. We do this separately for males and females in 5-year age groupings to allow the coefficients to vary across cohorts. Finally, we calculate the proportion of males and females in each age grouping by occupation who have an OTE wedge and the mean wedge as a proportion of salary and wages.

We then estimate the probability of an individual on the ATO 2 per cent file having an OTE wedge based on the coefficients estimated in the previous step. For each gender, age and occupation cohort, we estimate the number of individuals with an OTE wedge based on the proportions calculated in the previous step and then apply an OTE adjustment based on the mean gender-age-occupation OTE wedge to those records with the highest probability of having an OTE wedge.

Adopting conservative cut-outs

It is the case that our adjustment for overtime is broad and imprecise and that data on the 2 per cent file includes some perturbation. It is also the case that just over a quarter of employees are paid their SG entitlements on a quarterly basis which, given trend increases in wages and increases in the legislated SG rate over time, can result in a lower apparent SG rate when compared to current year salary and wages. Given these imprecisions, we adopt a conservative threshold when measuring non-compliance.

We first calculate an adjusted SG rate assuming everyone is paid their SG entitlement on a quarterly basis – the most conservative assumption - as follows:

$$Adjusted\ SG\ rate_t = \frac{0.25 \times AWE_{t-1} \times SG\ rate_{t-1} + 0.75 \times AWE_t \times SG\ rate_t}{AWE_t}$$

where AWE_t is Average Weekly Earnings from the ABS for the financial year and is used to account for growth in wages over time. We then adopt a threshold 75 basis points below this adjusted SG rate before measuring non-compliance.

For example, in 2021-22 when the legislated SG rate was 10%, individuals are only assessed as having unpaid superannuation entitlements if their mandated employer contributions are less than 9.06% of their wages. This is calculated as follows:

$$Adjusted\ SG\ rate_{2021-22} = \frac{0.25 \times 67{,}229.88 \times 9.50\% + 0.75 \times 69{,}259.79 \times 10.00\%}{69{,}259.79} - 0.75\% = 9.06\%$$

We then conduct sensitivity analysis for different cut-outs. These are present in Table 4 below.

[11] https://www.ato.gov.au/business/super-for-employers/paying-super-contributions/how-much-super-to-pay/list-of-payments-that-are-ordinary-time-earnings/

Table 4. Sensitivity analysis for different cut-outs

	2013-14	2014-15	2015-16	2016-17	2017-18	2018-19	2019-20	2020-21	2021-22
Legislated SG rate	9.25%	9.50%	9.50%	9.50%	9.50%	9.50%	9.50%	9.50%	10.00%
Adjusted SG rate	9.13%	9.41%	9.46%	9.46%	9.45%	9.44%	9.42%	9.46%	9.81%
Buffer = 125 basis points									
SG gap ($b)	3.99	4.17	4.36	4.38	4.63	4.52	3.75	4.32	4.75
Per cent underpaid	23.5%	23.4%	24.7%	23.3%	23.5%	22.4%	17.7%	21.1%	20.3%
Base Case: Buffer = 75 basis points									
SG gap ($b)	4.24	4.41	4.68	4.66	4.93	4.83	4.02	4.67	5.14
Per cent underpaid	29.1%	28.8%	31.3%	28.7%	29.0%	27.8%	22.1%	27.0%	26.0%
Buffer = 25 basis points									
SG gap ($b)	4.42	4.63	4.98	4.91	5.21	5.12	4.29	5.03	5.72
Per cent underpaid	36.9%	38.2%	43.9%	39.0%	39.3%	38.0%	31.2%	38.6%	40.6%

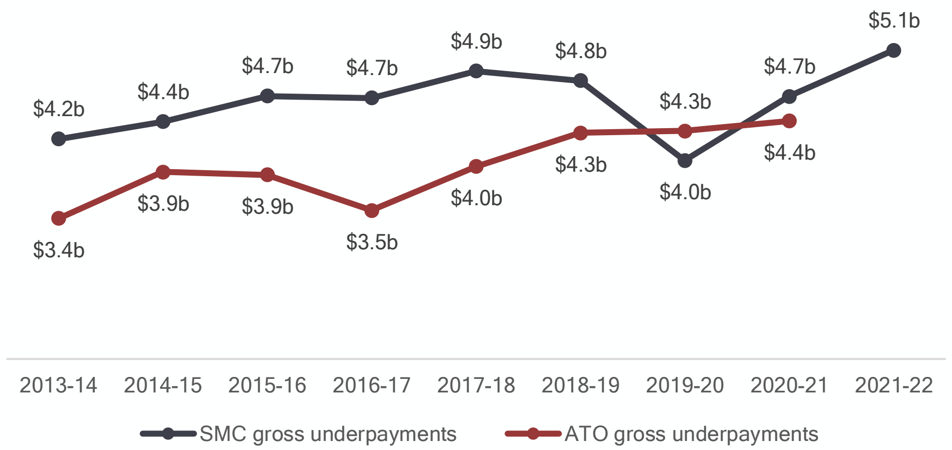
Notes: Individuals are assessed as having unpaid superannuation entitlements if their employer contribution rate is less than the adjusted SG rate (as defined above) minus the buffer.

Source: SMC analysis of ATO per cent sample file, 2013-14 to 2021-22.

SMC and ATO estimates

The ATO adopt a top-down approach to estimate the superannuation gap based on aggregate wage data from the ABS and reported super guarantee amounts from super funds. In recent years, the ATO estimates of the gross super gap have converged with SMC's estimates based on a bottom-up approach using detailed unit record data from personal income tax returns and Member Contribution Statements. This provides an additional level of comfort to our estimates.

Figure 12. SMC and ATO gross superannuation underpayment estimates



Source: SMC analysis of ATO 2 per cent sample file, 2013-14 to 2021-22, and ATO Superannuation guarantee gap, Latest estimates and trends, 2022 to 2023.