

What makes ‘Superbad’? Exploring the Influence of Different Groups in Superannuation Policy Recommendations

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ABSTRACT

Superannuation is of growing importance to the future economic stability of Australia. Totalling \$3.1 trillion at the end of the March 2021 quarter, superannuation is now around 175% of GDP and contributes significantly to Australia being the fifth largest funds management market in the world (Tang, 2020). Given the importance of superannuation to national savings and the retirement income of the population, understanding the different groups involved and how their interests are represented is of utmost importance. Drawing on lobbying participation and influence research, this paper explores the 2017 Parliamentary inquiry into superannuation guarantee non-compliance using interpretive content analysis. We examine the 65 submissions to the inquiry and the subsequent recommendations that were made in the ‘Superbad - Wage theft and non-compliance of Superannuation Guarantee’ (2017) report. We identify most submissions are used to lobby the committee to take actions that serve their self-interests of the submitter. Overall, we identify the final recommendations serve the public interest; however the process has the potential to be influenced by superannuation funds.

1. INTRODUCTION

Because of its superannuation system, Australia is now the fifth-largest funds management market in the world (Tang, 2020). This is largely due to both the compulsory nature of superannuation in Australia and the length of time that this system has been in place. The Superannuation Guarantee (SG), a mandatory system of employer-funded retirement savings, was introduced in 1992 and currently requires employers to contribute 10% of an employee's ordinary times earnings to a superannuation fund. The superannuation system covers 80% of employees (KPMG, 2016), improving retirement incomes for Australians as well as relieving the fiscal pressure on the government by no less than \$7 billion per year (Treasury, 2016).

Despite the mandatory nature of the SG, there is considerable non-compliance with it, affecting workers, employers and the broader society. The Australian Securities and Investment Commission (ASIC) revealed that 43.9% of administrations had unpaid superannuation, and it is estimated that at least 2.4 million workers have been affected by SG underpayment (Industry Super Australia [ISA] & Construction and Building Unions Superannuation Fund [CBUS], 2016). Nearly one-third of businesses were not compliant, resulting in around \$900 million in unpaid SG every year (Australian Council of Trade Unions, Industry Super Network, Industry Funds Credit Control, & Australian Institute of Superannuation Trustees, 2009). Recently, SG non-compliance gained more media attention with the release of 'Overdue: Time for Action on Unpaid Super', an industry report on the underpayment of superannuation. Following this report, the Australian Senate began an inquiry that invited different stakeholders to express their opinions on superannuation non-payment. Table 1 presents the Terms of References (hereafter referred to as ToR) for the inquiry.

Table 1

Terms of Reference

The impact of non-payment of the Superannuation Guarantee (SG), with particular reference to:
a. the economic impact on i. workers, their superannuation balances, and retirement incomes ii. competitive neutrality among employers, and iii. government revenue, including forgone superannuation contributions, earnings taxes, and SG charge penalties, over both the forward estimates and the medium term;
b. the accuracy and adequacy of i. information and data collected by the Australian Taxation Office (ATO), the Australian Prudential Regulation Authority and the Australian Securities and Investments Commission on SG non-payment,

ii. information and data collected by other agencies, such as the Fair Work Ombudsman, on SG non-payment, and

iii. any legislative, privacy, or other reporting barriers preventing the collection of accurate information and data on SG non-payment

c. the role and effectiveness of:

i. the ATO monitoring, investigations, and recovery of unpaid SG, including technology and data collection to predict and prevent non-payment

ii. resources and coordination between government agencies and other stakeholders to prevent non-payment

iii. legislation and penalties to ensure timely and fair payment of SG

iv. superannuation funds in detecting and recovering unpaid SG,

v. employment and contracting arrangements, including remedies to recoup SG in the event of company insolvency and collapse, including last resort employee entitlement schemes and

vi. measures to improve compliance with the payment of SG

d. the appropriateness of responses by

i. the ATO receiving complaints and ‘tip-offs’ about SG non-payment

ii. members of Parliament asked to assist and support constituents who have been impacted by SG non-payment, and

iii. accountants, auditors, creditors and financial institutions who become aware of SG non-payment; and

e. any other related matters

Note. Reprinted from Parliament of Australia, retrieved from https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SupernnuationGuarantee/Terms_of_Reference

Motivated by the massive economic impact of SG non-compliance, this paper explores the influence of different groups on the 2017 inquiry into SG non-payment. The existing literature has identified two streams of lobbying research: participation and influence (Giner & Arce, 2012). This paper combines both streams into an analytical framework to investigate the interest groups involved in the inquiry process. Furthermore, this paper draws on regulation theory to further investigate the influence of interest groups on the outcomes of the inquiry.

The remainder of the paper is organised as follows. Section 2 will review regulation theory and lobbying research. Section 3 will explain the method and research design used in this study. Sections 4 and 5 will present the results and

findings, while Section 6 will conclude with the contributions and limitations of this study and avenues for future research.

2. LITERATURE REVIEW

The process of making and changing a regulation and investigating its effectiveness has its roots in regulation theory. Broadly, there are two schools of regulation theory: public interest theory and private interest theory (Mitnick, 1980). According to public interest theory, regulation is supplied in response to public demand to correct market inefficiencies (Levine & Forrence, 1990; Peltzman, 1989; Posner, 1974). Under this theory, government regulations are designed and operated to achieve the optimal allocation of resources when market failure occurs (Arrow, 1970; Shubik, 1970). Bator (1958) noted that optimal allocation can be difficult to achieve in practice. Therefore, when the market fails, legislation becomes an instrument to correct this (Den Hertog, 1999), and regulation can also enhance public confidence in capital markets (Deegan, 2010; Levine & Forrence, 1990).

Public interest theory posits that regulations are set for the benefit of society as a whole rather than a particular group (Levine & Forrence, 1990). As a result, a regulatory body is seen as a neutral arbiter that considers the interests of society (Deegan, 2010). Taylor (2011) drew on public interest theory to interpret superannuation legislation and observed that the original objective of superannuation was to enhance retirement savings and thus overcome the economic myopia of employees. In the 'Super system review' final report (2010), the government also claimed that this is still the objective of superannuation. According to public interest theory, superannuation legislation is implemented for the good of society as a whole. However, public interest theory is generally criticised for providing 'little evidence' that the objectives of regulation are based on the public interest (Uche, Serra, & Valero, 2001, p. 68).

Capture theory is an extension of public interest theory and arose from researchers who had investigated the life cycle of regulators within the range of public interest theory (Posner, 1974). It was found that the regulation objective changes as regulatory agencies age. In their youth, regulatory agencies work towards the public interest. However, as they grow and mature, regulators are captured by certain groups (Etzioni, 2009). This theory emphasises that regulation fails to achieve its original purpose when it is captured by interest groups (Posner, 1974) and that these interest groups become involved in the formation of regulations (Bentley, 1908; Richardson & Truman, 1951). Further, it is proposed that the regulated industries will eventually dominate their own regulations (Huntington, 1966; Leiserson, 1946). These industries are motivated to influence the regulatory process both directly and indirectly to benefit themselves (Mitnick, 1980). It is difficult for regulatory agencies to remain independent and serve the public interest over a long period of time. Therefore, while new regulations may be introduced to serve the public interest, the greater the benefits

provided by the industries to the regulators, the harder it is for the regulators to maintain independence (Posner, 1974).

Consistent with public interest theory, the original purpose of accounting standards is to correct accounting failures. However, research has shown that large accounting firms have captured regulators (Walker, 1987). Cortese, Irvine and Kaidonis (2010) also found evidence that extractive industries have captured the International Accounting Standards Committee/International Accounting Standards Board to maintain the flexibility of their financial reporting. In the superannuation area, Taylor (2011) presented evidence that even when regulation was originally introduced to serve the public interest, the regulators were captured by the powerful financial services industry. However, previous studies have not explained the particular conditions under which groups can successfully capture the regulatory process (Den Hertog, 1999).

In contrast to public interest theory, private interest theory, also referred to as the economic theory of regulation, is based on the notion that the regulatory process is dominated by private interest groups as they have more political effectiveness than other interest groups (Posner, 1974). Under this theory, regulations primarily aim to serve or protect the interests of certain groups rather than to benefit society. Different industries with direct economic interests lobby to maximise their profitability in the political process, and groups form to protect their own interests (Stigler, 1971). This theory argues that particular industry groups have private interests to protect and the regulator itself, which is also an interest group, will protect its own interests to be re-elected or maintain the power of privilege (Deegan, 2011). Thus, new regulations are made to maximise the interest of certain parties and/or the regulator's own self-interest (Posner, 1974). Consequently, regulations are seen as a market of wealth transfers that politicians have the power to influence. They can then sell this influence for their own purposes (Posner, 1974) and protect their own interests using the regulatory process (Levine & Forrence, 1990). Accounting firms have been found to lobby the accounting standard setter to support the accounting methods that their clients currently use (Deegan, Morris, & Stokes, 1990). Supporting the economic theory of regulation, such groups make submissions to the regulator to protect their own specific interests.

Stigler (1971) outlined who benefits or does not benefit from regulations that allocate resources, especially regulations with undeniable effects on certain industries. More specifically, Stigler (1971) argued that the benefits per capita for small but powerful regulated industries are higher than the benefits for the public. The costs of obtaining legislation are higher for groups that are more diverse or have more free riders (Peltzman, 1989; Posner, 1974; Stigler, 1971). Regulation benefits are maximised for small but well-organised firms because their costs are lower than the costs for larger groups. Notably, these firms have fewer free riders and more homogeneous interests compared to larger and more diffused organisations. In contrast, the costs of obtaining legislation for the public are higher with fewer benefits per capita (Stigler, 1971).

Lobbying research examines the processes that different groups use to influence regulators. The regulatory process provides lobbying groups with a way to participate in regulation and influence regulators (Giner & Arce, 2012). Lobbying activities are defined as the activities and methods interested parties use to influence policymakers to serve their own self-interests (Sutton, 1984). Stenka and Taylor (2010) stated that lobbying activities can be classified into formal and informal channels. Formal lobbying activities include communications such as written submissions, while informal lobbying activities include, for example, telephone conversations with regulatory body members (Georgiou, 2004; Robinson & Walker, 1993). The written submissions made by interest parties during standard-setting processes are considered to be the most accessible data for researchers reflecting on lobbying activities (Stenka & Taylor, 2010).

Stenka and Taylor (2010) classified the lobbying literature by investigating written submissions in two streams: participation and influence. The first stream examined the motivations and characteristics of groups and the content of their submissions, expanding the understanding of these groups' participation. The second determined the policymaker's responses to these lobbyists and assessed their influence (Giner & Arce, 2012).

Lobbying participation studies identify the motivations of lobbying groups by analysing their positions. Some studies only focus on one group, such as the preparers of financial reports (Guenther & Hussein, 1995; MacArthur, 1988, 1996; Watts & Zimmerman, 1978) or audit firms (Meier, Alam, & Pearson, 1993; Puro, 1984), while others examine several groups (Larson & Brown, 2001; Stenka & Taylor, 2010; Tutticci, Dunstan, & Holmes, 1994). In accounting research, the motivations of two groups are normally considered: preparers of financial reports and audit firms. Preparers lobby depending on the expected future cash flow resulting from the proposed rules (Watts & Zimmerman, 1978), while audit firms prefer regulations that may improve their audit opportunities and public credibility (Clarke & Dean, 2014; Lee, 1994; Lee, 1995; Puro, 1984; Saemann, 1999). Accounting research examines lobbying strategies using written submissions, including exposure drafts and discussion papers, to determine the motivations of different groups and how they participate in the lobbying process (Jupe, 2000; Tutticci et al., 1994; Weetman, 2001; Weetman, Davie, & Collins, 1996).

To determine the position of a respondent in the process, it is critical to identify the issues that they lobby for and the supporting arguments that they provide. Groups are expected to lobby for issues that relate to their interests. Some researchers have examined single issues and observed that respondents often address only parts of exposure drafts (Puro, 1984). However, Francis (1987) criticised this approach because it may cause researchers to misunderstand groups' positions and motivations. Tutticci et al. (1994) noted that the motivations of different groups can be analysed clearly if all relevant issues are investigated.

Supporting arguments are normally based on economic consequences or conceptual accounting principles. Economic-consequence arguments address the economic implications of certain proposed regulations, whereas conceptual-based arguments reference accounting principles or rules. Some submissions also use a combined approach to justify their positions and support their arguments (Jupe, 2000; Tutticci et al., 1994). Groups trying to lobby in the standards-setting process are expected to provide mixed arguments. This is also a way to determine their position, since these groups will not express their true beliefs when discussing certain issues because they are not accepted in society and politics (O'Keefe & Soloman, 1985).

The first research question is framed by participation studies. These studies have investigated the participation of different interest groups by examining their submissions and analysing their lobbying strategies to understand their motivations and preferences. However, no known studies have examined group participation in the SG area or categorised constituents into different corresponding groups. Many studies have classified groups in the accounting area and found that preparers and audit firms are the most active groups in the accounting regulatory process. Moreover, because most participation studies have adopted a quantitative approach, there is a lack of studies that use qualitative methods to analyse lobbying strategies (Deegan & Shelly, 2014). These factors led to the first research question:

RQ1: How did different groups respond to the Terms of Reference?

Influence studies consider power in the regulatory process and determine the regulator's response to lobbying by different parties (Hope & Gray, 1982; Kwok & Sharp, 2005; Pong & Whittington, 1996). Notably, influence studies have reported mixed findings. Some studies have revealed successful lobbying (Hope & Briggs, 1982; Hope & Gray, 1982; Kwok & Sharp, 2005; Nobes, 1992; Pong & Whittington, 1996), while others have only found a low level of impact from lobbying groups (Brown, 1981; Mian & Smith, 1990; Saemann, 1999; Weetman, 2001). Giner and Arce (2012) conducted a content analysis on comment letters and concluded that standard setting is a pluralistic process and no party dominates the International Accounting Standards Board. Following their analysis, standard setters can be interpreted as independent entities (Coombes & Stokes, 1985; Giner & Arce, 2012; Hussein & Ketz, 1980). Preparers were revealed to be the most influential group in the standard-setting process in cases of successful lobbying (Cortese & Irvine, 2010; Hope & Briggs, 1982; Hope & Gray, 1982; Jupe, 2000; Kwok & Sharp, 2005; Nobes, 1992). Using critical discourse analysis, Cortese and Irvine (2010) reported that powerful extractive industries captured the standard-setting process of International Financial Reporting Standards 6. Based on their findings, Kwok and Sharp (2005) illustrated that even though standard setters nonetheless try to meet the needs of different parties, preparers can exercise significant influence to change the standards in line with their own preferences. Some researchers have concluded that users are the group most aligned with the regulator (Saemann, 1999; Weetman, 2001), even if just on the surface

(Weetman, 2001). Following this stream, standard setting can be interpreted as a pluralistic process, with preparers being the most significant and powerful party in it.

To be consistent with lobbying influence studies, the second research question focuses on the influence of different groups. In this stream, studies typically analyse the responses from regulators to lobbyists. Some studies have revealed that preparers are an influential group in the regulatory process, while others have reported that different groups have low impacts on regulators. Although much accounting research has been conducted to explore the influences of different parties, limited research has examined these influences in the superannuation area (Taylor, 2011). Based on the Parliamentary Inquiry into SG non-payment (2017), the ‘Superbad – Wage theft and non-compliance of Superannuation Guarantee’ report gives 32 recommendations. Whether these recommendations reflect the whole breadth of the submissions or favour certain groups needs to be examined. Moreover, regulation theories to explain the motivations and influences of different groups should be combined to clarify how these groups influence regulation in the SG area. These factors led to the second research question:

RQ2: Are the recommendations in the committee report consistent with the submissions?

These two inter-related research questions aim to understand the motivations and influences of different groups in the SG area. Critically, these questions can be used to fill the research gap on lobbying in the SG area. To do so, the researcher must explore both the submissions to the inquiry and the subsequent recommendations in the committee’s report.

3. RESEARCH METHOD AND DESIGN

The Parliamentary Inquiry into SG non-payment received a total of 72 submissions. However, seven submissions were listed as confidential and not available for analysis. We included the remaining 65 submissions in our analysis. In addition, our study also examined the 32 recommendations contained in the committee report.

Following Deegan and Shelly (2014), we used interpretive content analysis to group the submissions and then code their themes. Our initial grouping method was based on the classifications used in the Inspector-General of Taxation report (2010), resulting in four defined groups: Employees, Employers, Superannuation Funds and Regulators. We assigned submissions to these groups based on the information provided in them. If it was unclear which group a submission should be assigned to, we used the ‘About Us’ section on the organisation’s website to decide the classification. We classified individual submissions with regard to how the submitter identified themselves. For example, some submitters clearly identified themselves as workers or professionals within their submissions.

After the initial classifications, we identified 46 submissions that could not be neatly sorted into these four groups. We then used an inductive approach to group the

remaining submissions, resulting in the new categories of Professionals, Lobbying Groups, Government Departments, the Regulator and Others. We further refined and reclassified all lobbying groups depending on whose interests they were representing. Table 2 shows the groups and number of submissions for each group.

Table 2

Number of Submissions

Classification	Number of Submissions
Employees	26
Superannuation funds	7
Employers	4
The regulator	1
Government departments	3
Professionals	17
Other	7
Total	65

To address RQ1, we used codes based on the ToR of the inquiry, the represented group and our interpretation of the preferences of each submission. We summarised and distinguished the position of each group as either ‘addressed’ or ‘not addressed’ for each term. This approach is supported by the lobbying participation research discussed in Section 2 (Francis, 1987).

To answer RQ2, we compared the issues identified in the inquiry with the 32 recommendations in the committee report. Thus, we coded these recommendations in line with the ToR. For example, we coded Recommendation 7 – ‘the committee recommends the government review the definition of Ordinary Time Earnings for the purposes of SG obligation calculations and undertake an examination of the wider implications of any potential changes’ – as ‘role of effectiveness of the legislation and penalties’. In cases where there was an overlap between the recommendations and the different ToR, we classified them in a consistent manner with the classification method used to address RQ1. For example, Recommendation 28 suggests increasing the information exchange between the Fair Work Ombudsman (FWO) and the ATO, which could be classified as ‘the data that government agencies collected’ or ‘the coordination and resources for government agencies’. We decided to choose ‘the data that government agencies collected’ because when classifying the responses to address RQ1, we found that similar statements were included in this category.

After the classification process, we grouped each recommendation with the corresponding term from the ToR. There are (i) two recommendations for the first term (‘Economic impact of SG non-compliance’), (ii) eight recommendations for the second term (‘Accuracy and adequacy of information and data’), (iii) 20

recommendations for the third term (‘Role and effectiveness of different parties and legislation in the prevention and recovery of unpaid SG’) and (iv) two recommendations for the fourth term (‘Appropriateness of responses from different parties’). We conducted the analysis after the classification and grouped recommendations to match the results of RQ1. While matching these recommendations, we considered which group the submission came from, given that this is a group-based analysis. This analysis formed the basis for determining the influence of different groups, which is in line with previous influence studies on lobbying (Hope & Briggs, 1982; Hope & Gray, 1982; Kwok & Sharp, 2005; Nobes, 1992; Pong & Whittington, 1996). The following sections will outline each term.

4. GROUPS RESPONSES TO TERMS OF REFERENCE

Economic impact of SG non-compliance

This term specifically addressed the economic impacts of SG non-compliance in three areas: workers, employers and government revenue. The first part of this term specifically asked for feedback on the impact of non-compliance on workers, their superannuation balances and their retirement incomes. Table 3 shows the groups that addressed the economic impact of non-compliance on workers.

Table 3

Economic impact on workers

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	22	4
Superannuation fund	7	5	2
Employers	4	1	3
The Regulator	1	0	1
Government Departments	3	2	1
Professionals	17	2	15
Other	7	2	5
Total	65	34	31

Except the Regulator, all groups addressed this term. Notably, Employees and Superannuation Funds emphasised that SG non-compliance is significant and will have a huge impact on workers. These groups used either first-hand experience or superannuation funds data to emphasise this economic impact. Moreover, they both chose economic-based arguments to illustrate the impact of non-compliance, which can be seen in the following quote:

‘Unpaid superannuation contributions is a significant issue for all relevant stakeholders, particularly employees who bear the consequential financial losses, affecting their future retirement income’. (Submission 7)

In contrast, the Regulator did not address this term and instead questioned the data provided by the Superannuation Funds in a specific section titled ‘Industry Super

Australia Report'. The Regulator believed that the data overestimated SG non-compliance. Interestingly, the Superannuation Funds pre-emptively addressed this disagreement from the Regulator, stating they were willing to debate the figures and urging the Regulator to provide alternative figures for SG non-compliance.

Government Departments agreed that SG non-compliance was a serious issue. However, rather than providing data on the economic impact to support this, they used conceptual-based arguments. Similar to Government Departments, Employers discussed the economic impact on workers by presenting a conceptual-based argument. Furthermore, Professionals commented that the economic impact was significant to workers, but they also stated that they were not able to provide specific data on this subject. Others considered the economic impact on the workers but chose to use previously published data in their arguments.

The second part of this term asked for feedback on the economic impact of SG non-compliance on competitive neutrality among employers. Table 4 shows the responses for this term. Except the Regulator, all groups addressed this term.

Table 4

Economic impact on employers

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	4	22
Superannuation fund	7	1	6
Employers	4	1	3
The Regulator	1	0	1
Government Departments	3	2	1
Professionals	17	1	16
Other	7	1	6
Total	65	10	55

Superannuation Funds, Employees, Employers, Government Departments, Professionals and Others believed that there was an economic impact on employers. Namely, non-compliant employers had an advantage over compliant employers. The groups used conceptual-based arguments and provided no specific economic data to address this term. Moreover, these groups pointed out that small businesses with cash flow pressures are more likely to be non-compliant than other businesses. In particular, the findings of the Professionals emphasised the importance of managing cash flows and encouraged employers to seek professional advice. In contrast, Employers maintained that most employers are compliant but also proposed that non-compliant employers can reduce their costs through non-compliance.

The last section of this term asked about the impact of non-compliance on government revenue, including forgone superannuation contributions, earnings taxes and SG charge penalties for the medium term and in future estimates. Table 5 shows how the different groups addressed the economic impact on government revenue. In

particular, Employees, Superannuation Funds and Government Departments considered the impact on the government.

Table 5

Economic impact on government revenue

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	2	24
Superannuation fund	7	2	5
Employers	4	0	4
The Regulator	1	0	1
Government Departments	3	1	2
Professionals	17	0	17
Other	7	0	7
Total	65	5	60

Employees and Superannuation Funds agreed that non-compliance has a negative effect on government revenue, providing estimated figures for the loss in tax revenue. Government Departments also agreed that SG non-compliance will be a burden for the government in the future as the age pension increases. They also pointed out that costs for the ATO will increase because of non-compliance but did not provide specific data to support this claim.

Accuracy and adequacy of information and data

The second area of the ToR asked specifically about whether the information collected by regulators and other agencies are accurate and adequate, and whether there are barriers that prevent the collection of information. The first aspect asked about the accuracy and adequacy of the information collected by the ATO, Australian Prudential Regulation Authority (APRA), and ASIC on SG non-payment. Table 6 illustrates the participation from different groups.

Table 6

Information collected by the ATO

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	4	22
Superannuation fund	7	3	4
Employers	4	0	4
The Regulator	1	1	0
Government Departments	3	1	2
Professionals	17	3	14
Other	7	0	7
Total	65	12	53

Submissions from Superannuation Funds and Employees agreed that most information is collected by the ATO, but they also believed the information is insufficient for the ATO to discharge their role, therefore more resources should be

given to the ATO. Employees also pointed out that data sharing between the ATO and ASIC about insolvent companies needs to be improved.

The Regulator emphasised that the data they can collect is not timely and adequate, which reduces their ability to recover SG. The ability of the ATO to recover unpaid SG relies on information provided by superannuation funds, employees and employers, which will limit the ATO’s effectiveness. Moreover, the Regulator recommended that the Member Contribution Statement needs to have more information to assist the ATO to investigate SG non-compliance. Government Departments agreed with the Regulator that it is challenging for the ATO to obtain timely information. They stated that some legislation already simplifies data sharing between the ATO and ASIC; however, this needs to be reviewed and enhanced.

Professionals emphasised the ATO does not have timely data considering the ATO rely on the employers’ report. Also, under current systems, employers are not required to report SG to the ATO. Therefore, the data available to the ATO is highly dependent on employers’ awareness of lodging those forms.

The next term asked for feedback on the information and data collected by other agencies, such as the FWO, on SG non-payment. As shown in Table 7, Employees, Superannuation Funds, Government Departments and Professionals addressed this ToR while Employees and Others did not.

Table 7
Information collected by other agencies

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	5	21
Superannuation fund	7	1	6
Employers	4	0	4
The Regulator	1	0	1
Government Departments	3	1	2
Professionals	17	3	14
Other	7	0	7
Total	65	10	55

Superannuation Funds and Employees considered data sharing between government agencies and the ATO is inadequate. They suggested data should be shared between the ATO and the FWO as the FWO has the responsibility to investigate noncompliant employers. One submission from Professionals considered the information collected by the FWO is not sufficient, though that submission did not provide any supporting arguments. Government Departments stated that FWO and the ATO work collaboratively while acknowledging the FWO does not have access to the payment information.

This ToR then asked for feedback on any legislative, privacy, or other reporting barriers preventing the collection of accurate information and data on SG non-payment. Table 8 shows that Employees, Superannuation Funds, the Regulator,

Government Departments, Professionals and Others all commented on the barriers that prevent the collection of SG information.

Table 8
Barriers for information collection

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	8	18
Superannuation fund	7	5	2
Employers	4	0	4
The Regulator	1	1	0
Government Departments	3	2	1
Professionals	17	5	12
Other	7	2	5
Total	65	23	42

Employees, Superannuation Funds, and Professionals believed communications between superannuation funds and the ATO are limited. They considered the ATO resists sharing data with superannuation funds, citing the Privacy Act, which decreases the ability of superannuation funds to help their members recover SG. The Regulators and Professionals emphasised that the information provided by the superannuation funds is on an annual basis, whereas SG is paid quarterly. Thus this time lag reduces the ability of the ATO to detect non-compliance.

Role and Effectiveness of different parties and legislation in the prevention and recovery of unpaid SG

This ToR asked about the role and effectiveness of different aspects of the system. The first part asked about the ATO’s monitoring, investigations, and recovery of unpaid SG, as well as their technology and data to predict and prevent non-payment of superannuation. As can be seen in Table 9, all groups commented on the role and effectiveness of the ATO except Employers.

Table 9
The role and effectiveness of the ATO

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	12	14
Superannuation fund	7	3	4
Employers	4	0	4
The Regulator	1	1	0
Government Departments	3	1	2
Professionals	17	4	13
Other	7	3	4
Total	65	24	41

Submissions from Employees expressed their frustration that the ATO seems to have no power to recover SG and limited ability to investigate on behalf of affected employees. Submissions from Superannuation Funds and Professionals also found the ability of the ATO to investigate and recover SG is limited. They believed that the ATO should improve their ability, which includes allocating significant resources.

However, the Regulator defended itself stating that the ATO has met the benchmark it sets for its services since 2013 and that the ATO investigates all Employee Notifications (ENs) about SG non-compliance. The Government Departments agreed that the ATO recovery ability heavily depends on that data. It is pointed out by Employees and Others that employees cannot do anything but wait for the ATO to help them recover SG under the current system and asked if it should be considered whether employees or other parties such as unions or superannuation funds could take legal action against employers on behalf of themselves or their members.

The next part of this ToR considered the effectiveness of resources and coordination between government agencies and other stakeholder in preventing non-payment of superannuation guarantee. As can be seen in Table 10, Employees, Superannuation Funds and Governments Departments commented on the resources and coordination between government agencies.

Table 10

Resources and coordination between government agencies

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	5	21
Superannuation fund	7	3	4
Employers	4	0	4
The Regulator	1	0	1
Government Departments	3	2	1
Professionals	17	0	17
Other	7	0	7
Total	65	10	55

Superannuation Funds and Employees pointed out that government agencies, especially the FWO, has limited ability to help employees. Moreover, some advice from the FWO contradicts ATO advice. The effectiveness of other government agencies, in the opinion of Superannuation Funds and Employees, is limited and inadequate. This is consistent with submissions from Government Departments that stated the FWO has no access to payment information and therefore cannot monitor SG proactively and can only forward complaints to the ATO for action.

Superannuation Funds and Government Departments mentioned the multi-agency established in 2016 to help employees with SG non-compliance identification. Superannuation Funds noted that reports on SG non-compliance from the multi-agency are not released and asked to release those reports.

The next part of this term asked for feedback on the effectiveness of legislation and penalties to ensure timely and fair payment of SG. As can be seen in Table 11, all groups addressed this ToR.

Table 11

Legislation and penalties to ensure timely and fair payment of SG

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	15	11
Superannuation fund	7	4	3
Employers	4	2	2
The Regulator	1	1	0
Government Departments	3	3	0
Professionals	17	12	5
Other	7	3	4
Total	65	40	25

Employees and Superannuation Funds argued that the \$450 exemption is no longer applicable in the current context and employers always take advantage of this exemption to escape their SG obligation. The quarterly payment was highlighted by Employees, Superannuation Funds and Professionals. The initial purpose of the quarterly payment was introduced to provide employers time to adjust their cash flow. However, some employers take advantage of this delay, which makes tracking non-compliance more difficult. Professionals and Employees noted the current system relies on employers' self-assessment which is insufficient. Employees, Superannuation Funds and Professionals supported closing the salary sacrifice loophole which can result in employers paying less SG. Employees and Professionals believed using OTE to calculate the SG is confusing and that employers will make errors due to a poor understanding of OTE. Surprisingly, employers also supported considering changing the OTE. However, looking into that submission deeply, considering the OTE is a supporting recommendation for reducing the complexity of the SG system. Thus, Employers are still lobbying based on their self-interests.

Employees and Superannuation Funds considered the penalty for employers for SG non-payment as inadequate in preventing non-compliance. Professionals accepted that although there is a penalty for noncompliant employers, it is not effective in practice as employers are unaware of the penalty or they view it as insignificant. Therefore, penalties in the current system cannot change the employers' attitude. Government Departments agreed on this point and suggested reviewing the penalty for employers.

In contrast, employers strongly opposed increasing penalties. In fact, as a main focus of submissions by Employers, they held that the penalty should be reduced and only applied when appropriate. They argued that rather than penalties, remedies should be the dominant method to improve compliance.

The next part of this term asked for feedback on the effectiveness of detecting and recovering unpaid SG. Table 12 shows the results.

Table 12

Superannuation funds in detecting and recovering unpaid SG

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	8	18
Superannuation fund	7	3	4
Employers	4	1	3
The Regulator	1	0	1
Government Departments	3	1	2
Professionals	17	0	17
Other	7	0	7
Total	65	13	52

Table 12 shows that Employees, Superannuation Funds, Employers and Government Departments commented on the role and effectiveness of superannuation funds in detecting and recovering unpaid SG. Employees held that superannuation funds are unable to help employees recover SG as current legislation sets no responsibility for superannuation funds to report to the ATO or to their members. Moreover, Employees stated superannuation funds will direct employees to the ATO. In contrast, Superannuation Funds believed that they do help employees by allocating resources to encourage their members to check their superannuation account for non-payment. They acknowledged that it is difficult for superannuation funds to assist their members to recover the SG as they do not have clear and enforceable powers to do so. Government Departments also noticed that some superannuation funds are active in enforcing the SG.

The next part of this term asked for feedback on the role and effectiveness of employment and contracting arrangements, including remedies to recoup SG in the event of company insolvency and collapse and last resort employee entitlement schemes. Table 13 shows that all groups commented on this term.

Table 13

Employment and contracting agreements

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	12	14
Superannuation fund	7	2	5
Employers	4	0	4
The Regulator	1	1	0
Government Departments	3	3	0
Professionals	17	3	14
Other	7	2	5
Total	65	16	49

The Employees, Superannuation Funds, and Professionals all considered sham contracting is an issue facilitating non-compliance. Employees and Superannuation Funds present data on the economic impact of sham contracting; however, Employers emphasised that most employers follow the rules and are compliant in regards to superannuation. Government Departments agreed with the implications of sham contracting and report that this could be solved if the ATO's current private binding advice extended to employees.

Submissions from Superannuation Funds, Employees, Government Departments and Others mentioned phoenix activity and acknowledge that it is difficult for the ATO to recover SG from insolvent employers. Even when employees reported their employers before liquidation, the employers are already insolvent when the ATO starts investigating the SG non-compliance. Consequently, employees’ SG cannot be recovered. The Regulator commented that recovery of SG could increase as insolvency practitioners’ recovery powers improve.

Another issue considered by Employees, Superannuation Funds, Professionals and Government Departments is that SG is not covered by the Fair Entitlement Guarantee (FEG). Therefore, employees cannot use the FEG to protect their SG if a company goes insolvent. Interestingly, despite most of the groups supporting the FEG including SG, the Department of Employment disagrees and asserts that SG should not be included in the FEG. It provides a conceptual-based argument illustrating that covering SG will increase the costs for both the government and employers. This is the only submission that insists FEG should not be extended to cover SG.

Professionals and Others stated the situation becomes more complicated given different structures used by employers, as some structures, such as trusts and franchises, can be used to escape their obligations. Finally, professionals considered that having nominal interests treated differently in the Corporations Act and the SG Act creates an unfair situation for some creditors.

The next ToR sought feedback on the role and effectiveness of measures to improve compliance with the payment of SG. Table 14 illustrates that all groups discussed this ToR. Superannuation funds, Employees, Professionals and Others evaluated the current systems the ATO is using to improve SG compliance: SuperStream and Single Touch Payroll (STP). Those submissions provided both benefits and weaknesses of those systems. The efficiency of data administration will be enhanced because of the introduction of SuperStream; however, SuperStream does not have an impact on the payment system. Government Departments held that Superstream and STP could improve compliance with SG and will reduce the burden on employers, but their submissions did not consider the weaknesses of both systems.

Table 14
Measures to improve compliance with the payment of SG

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	3	23
Superannuation fund	7	3	4
Employers	4	1	3
The Regulator	1	1	0
Government Departments	3	2	1
Professionals	17	6	11
Other	7	2	5
Total	65	18	47

Submissions from employers also considered these measures. However, they suggested that the systems for employers are too complex; therefore employers cannot comply even though they want to pay superannuation for their employees. They emphasised superannuation funds websites are too complicated and difficult and therefore not useful for employers. In their opinion, employers try to comply; however, because of complexities, employers cannot pay employees correctly or on time.

The Regulator’s submission highlighted the many initiatives it has implemented to improve compliance. Interestingly, Employees and Superannuation Funds held a view that these programs are not well communicated to stakeholders, so there is a lack of awareness of those initiatives.

Appropriateness of responses

The last ToR area considers the appropriateness of responses by different groups within the superannuation system. The first group considered is the ATO. Table 15 shows the responses for each group.

Table 15

Responses by the ATO

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	11	15
Superannuation fund	7	0	7
Employers	4	0	4
The Regulator	1	1	0
Government Departments	3	1	2
Professionals	17	2	15
Other	7	0	7
Total	65	15	50

Employees, the Regulator, Government Departments, Professionals and Others considered the appropriateness of responses by the ATO receiving complaints and ‘tip-offs’ about SG non-payment. Employees are very negative about responses from the ATO. Submissions from employees stated that employees are treated “like an offender rather than a victim by all staff at the ATO during the time of [their] enquires and the investigation” (Submission 3). This group also noted the ATO’s reference to the Privacy Act when refusing to provide information.

In contrast, the regulator’s submission stated that it views complaints as the opportunity to improve. They stated they investigate all employee reports of non-compliance and contact employees at each stage by email or mail. These claims contradict those in the employees’ submissions. The Government Departments recognised that employees feel frustrated and have difficulties with the ATO in regards to their complaint; however, they also point out that this is because of the Privacy Act as it prevents the regulators providing information.

Professionals and Others agreed with employees in that the ATO’s response is inadequate. They stated that the ATO is responsive in the initial stage. However, after

this stage, they found that the response from the ATO is inadequate and that no further information is given due to the privacy of the employer.

The next section asks about the appropriateness of responses from members of Parliament asked to assist and support constituents who have been impacted by SG non-payment. Table 16 shows that only Employees and Professionals addressed this ToR.

Table 16
Responses by the Member of Parliament (MP)

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	2	24
Superannuation fund	7	0	7
Employers	4	0	4
The Regulator	1	0	1
Government Departments	3	0	3
Professionals	17	2	15
Other	7	0	7
Total	65	4	61

Employees expressed their frustration that MPs do not actively help them recover their SG. In contrast, Professionals stated MPs are eager to help unpaid employees. However, even though they believed the MP is a good place to seek help, they pointed out that this is not publicised enough. Therefore many affected employees do not know they have this option.

The final ToR asked for feedback on the appropriateness of responses by accountants, auditors, creditors and financial institutions who become aware of SG non-payment. As can be seen in Table 17, only Employees and Professionals addressed the responses by Professionals. Employees are not satisfied with the help from professionals. Professionals, in contrast, considered it is imperative to have sought help from these practitioners. They thought professionals are helpful in discovering non-payment of SG and providing advice for how to proceed. However, they also pointed out that they do not have the power to recover SG.

Table 17
Responses by professionals

Classification of submitting party	Total	Addressed	Not Addressed
Employees	26	2	24
Superannuation fund	7	0	7
Employers	4	0	4
The Regulator	1	0	1
Government Departments	3	0	3
Professionals	17	8	9
Other	7	0	7
Total	65	10	55

Findings for first research question

Employees addressed all of the ToRs and believed there is a substantial economic impact of SG non-compliance by providing first-hand experience or using economic-based data. SG is the retirement savings of this group, so there is a direct economic link for employees. They lobbied for improving SG compliance focusing on the economic impact to workers, barriers in data sharing, the effectiveness of agencies and legislation, and the responses from the regulators. Increasing the ability to recover unpaid SG and protecting SG generally has a direct economic benefit for this group. Employees are an active group in lobbying in this inquiry.

Superannuation Funds addressed most ToRs and provide economic-based arguments in their lobbying. They focused on increasing data and the ability of government agencies, and increasing penalties for noncompliant employers. It is interesting to note this group does not comment on the ToR about the appropriateness of responses from the Regulator, Members of Parliament and Professionals to affected employees. This could be because addressing this ToR is not in their interests. This group, similar to the Employees, have direct economic interests in increasing SG compliance. Increased compliance will mean more contributions from employers, which will result in higher funds under management.

Employers addressed certain ToR and do not provide any supporting arguments for the economic impact. This group considers simplifying the SG system for employers and reducing penalties as priorities. The suggestions proposed by this group have potential economic benefits for employers themselves. Reduced complexity will decrease costs for employers in understanding the regulations and fulfilling their obligations. Reducing penalties will decrease their costs if they are not compliant with the SG. This group is different from the above interests group as the SG is a cost for this stakeholder. Therefore, employers may not lobby for improving compliance. According to O'Keefe and Soloman (1985), some groups will not reflect their true beliefs if those beliefs are socially unacceptable. This might be the explanation why some employers still lobby in this inquiry for compliance. However, as discussed above, their suggestions aim to decrease costs for them. The finding that some Employers lobbied to improve compliance differs from previous research in an accounting context (Watts & Zimmerman, 1978) which found groups wanting to reduce costs are active in the lobbying process. The different finding is likely due to SG already being set in place, while accounting standards are more open to change. Despite some employers arguing for compliance, evidence that they try to minimise their costs to protect their interests is still be found in this research.

The Regulator commented on the ToRs that are mostly related to itself, especially with regards to how inadequate data reduces their ability and how responses to complaints meet their benchmark. It does not discuss the economic impact of non-compliance which makes sense as this group does not have a direct economic interest in the outcome of the regulation. In its submission, the regulator emphasises the data it received is either inadequate or inaccurate which reduces its ability to detect and

recover SG. This group disagrees with Employees about responses from the ATO and states it meets the benchmark. Suggestions from this group consider increasing data and resources available to regulators would improve their regulatory abilities.

Government Departments addressed most of the ToRs and use conceptual-based arguments which is consistent with previous research that found government departments usually make conceptual arguments rather than economic (Giner & Arce, 2012). They will benefit indirectly if compliance behaviour improves or the penalty is increased as it will increase government revenue.

Professionals considered the economic impact but state they are not in a position to provide specific data. This group addresses most of the ToRs and is an active group in this lobbying process. Their suggestions about educating employers could be expected as this will benefit professionals. This is consistent with previous research that this group lobbies to improve their opportunities for providing services (Clarke & Dean, 2014; Lee, 1994; Lee, 1995; Puro, 1984; Saemann, 1999).

Others focused on the specific areas of insolvency and Phoenix activity, which cannot benefit them directly. However, especially for the academics in this group, this is their area of research. This is still consistent with previous lobbying research as those ToR addressed are the particular interests of that group (Tutticci, et al., 1994).

In general, each group lobbying in the SG inquiry process is endeavouring to benefit themselves, especially for the stakeholders that have direct economic interests. The four stakeholders identified by the Inspector-General of Taxation (2010) have different opinions on the reference areas. The employees and superannuation funds are the most active groups in the process, addressing all or most of the ToRs as compliance in SG will benefit them. The employers' suggestions also reflect their own interests as the costs for employers will be reduced if proposed suggestions are accepted. The regulator focuses on data it can collect and emphasises it has met its responsibilities when it followed up the ENs.

5. RECOMMENDATIONS IN THE COMMITTEE REPORT

The second research question asks if the committee report recommendations are consistent with the submissions. In order to determine this, each recommendation was mapped to the related ToR and then to the submissions from the different groups. We present each of the ToRs and the related recommendations.

Economic impact of SG non-compliance

The first ToR asked about the economic impact of SG non-compliance to workers, employers and government revenue. There are two recommendations for this ToR, which are providing estimates of non-compliance and education for small business.

Provide estimates of non-compliance

Superannuation funds in their submissions urged the regulator to release estimates of non-compliance. There is one recommendation in the committee report (Recommendation 2) which suggests the ATO release the SG gap reporting annually. This recommendation is therefore interpreted as aligning with suggestions from Superannuation Funds.

Provide education for small business

There is one recommendation (Recommendation 8) that suggests small business be educated on managing cash flow, which addresses concerns raised in submissions by Employees, the Regulator, Government Departments, and Professionals.

Accuracy and adequacy of information and data

The second ToR area sought feedback on whether the data collected by the regulator and other government agencies is accurate and adequate, and whether there are barriers preventing data flows.

Information collected by the ATO

Employees, Superannuation Funds and Government Departments in their submissions considered that information collected by the ATO is not accurate and adequate. Therefore, more resources should be given to the ATO. There are two recommendations (Recommendation 26, Recommendation 27) to enhance the data sharing between regulators, which is consistent with submissions from Employees, Superannuation Funds and Government Departments.

The Regulator also submitted that they could not provide timely and adequate data for various reasons, and Government Departments agreed with the ATO. The Regulator suggested that the member contribution statement needs to include more specific information and Government Departments agreed with this suggestion. There is one recommendation made (Recommendation 25) specifically addressing the needs of the Regulator which is interpreted as being in response to suggestions from Government Departments and the Regulator.

Information collected by other agencies

Employees and Superannuation Funds noted that the FWO does not have enforceable power to recover employees' SG, suggesting allocating more resources and data for the FWO. Moreover, Government Departments stated that the FWO has no access to payment information. There are two recommendations (Recommendation 17, Recommendation 28) that consider increasing the power of the FWO and improving information exchanged between the FWO and the ATO, satisfying the needs of Superannuation Funds, Employees, and Government Departments.

Barriers for information collection

Employees, Superannuation Funds and Professionals considered that data sharing between superannuation funds and regulators is prevented by the Privacy Act.

There are two recommendations (Recommendation 29, Recommendation 30) that address these concerns by exempting Privacy Principles and providing more power to superannuation funds. These recommendations are interpreted as being in response to suggestions from Employees, Superannuation Funds and Professionals.

Employees, Superannuation Funds, Professionals, the Regulator, Government Departments and Others recognise that it is difficult for employees to detect SG non-compliance from payslips. Consequently, the ENs is not effective in reflecting non-compliance, as the employees may not be aware they have not been paid superannuation. There is one recommendation in the committee report (Recommendation 32) to provide more information in payslips to assist employees in detecting unpaid SG. This meets the needs of Employees, Superannuation Funds, Professionals, the Regulator, Government Departments and Others.

Role and effectiveness of different parties and legislation in the prevention and recovery of unpaid SG

ATO

There are two recommendations (Recommendation 12, Recommendation 13) that address the ATO's ability to recover SG. They recommend the ATO becoming more proactive in the SG compliance space, and reviewing ATO's resourcing. These reflect the concerns of submission made by Employees, Superannuation funds, Professionals, the Regulator and Government Departments.

Third parties

One recommendation (Recommendation 14) addresses the ability of third parties to assist in recovering SG. It recommends considering a legislated option for employees or third parties to take private legal action against employers for unpaid SG. This recommendation reflects submissions from Employees and Others.

Fair Work Ombudsman (FWO)

Superannuation Funds, Employees and Government Departments made submissions on the power of the FWO as the FWO currently does not have power and resources to assist in SG recovery. There is one recommendation (Recommendation 18) that suggests increasing resourcing for the FWO.

Multi-agency

Government Departments noted that a multi-agency was established in 2016 to assist with non-compliance identification; however, Superannuation Funds expressed their disappointment with the multi-agency and urged them to release a report. One recommendation (Recommendation 1) addresses this issue and suggests the reports of the multi-agency need to be released, reflecting the needs of Superannuation Funds.

\$450 exemption

Removing the \$450 exemption has been highlighted by Employees and Superannuation Funds. They believe that employers take advantage of the \$450 exemption to escape their SG obligations. One recommendation (Recommendation 3) suggests removing this exemption, addressing the concerns of both Employees and Superannuation Funds.

Salary Sacrifice

Superannuation Funds, Employees and Professionals made submissions asking to close the salary sacrifice loophole that allows employers use the employees' voluntary contributions to fulfil their SG obligations. There is one recommendation (Recommendation 4) which suggests closing this loophole which is consistent with the submissions made by Superannuation Funds, Employees and Professionals.

Quarterly Payments

Superannuation Funds, Employees and Professionals highlighted the quarterly payment system and suggest that SG should be aligned to the employees' pay cycles or at least paid monthly. There is one recommendation (Recommendation 5) consistent with their suggestion to align the SG with pay cycles.

Ordinary Time Earnings

Employees, Employers and Professionals consider the use of Ordinary Times Earnings as confusing for the employers in calculating the SG, but also leaves risks that some employers may take advantage of this to escape their obligations. Therefore, there is one recommendation in the committee report (Recommendation 7) suggesting reviewing this calculation.

SGC Penalty

Employees, Professionals and Superannuation Funds considered the penalty for SG non-payment by employers as inadequate in preventing non-compliance. Government Departments also suggest a review of the superannuation guarantee charge penalty for non-compliance. However, Employers oppose the penalty strongly. The recommendation (Recommendation 16) in the committee report is consistent with the submissions from Employees, Superannuation Funds, Government Departments and Professionals.

Superannuation funds

Employees submitted that superannuation funds are unable to help employees recover SG. In contrast, Superannuation Funds believed that they do assist their members, but they also stated they do not have clear and enforceable powers to do so. Government Departments noted that some superannuation funds are active in enforcing the SG.

There is one recommendation (Recommendation 15) that superannuation funds seeking default status in industry awards have a rigorous arrears collection process.

This is consistent with Employee concerns as they see the current superannuation fund approach as inadequate.

Employment and contracting arrangements

Employees, Superannuation Funds, and Professionals considered sham contracting as an issue facilitating non-compliance. Government Departments agreed with the implications of the sham contracting report and find that this could be solved if the ATO's current private binding advice extended to all employees. There is one recommendation (Recommendation 6) which agrees with the suggestion from Government Departments and recommends extending the private binding advice to all workers and businesses. This recommendation addresses the concerns of Employees, Superannuation Funds, Professionals, and Government Departments.

Phoenix activity was considered in submissions from Superannuation Funds, Employees, Government Departments and Others. There are two recommendations (Recommendation 19, Recommendation 20) that suggest identifying the directors using a Director Identification Number and strengthening the ability to recover SGC liabilities through the Director Penalty Notice framework. These recommendations consider the suggestions from Superannuation Funds, Employees, Government Departments and Others.

Liquidation

Employees and Superannuation Funds made submissions that identified liquidation as an issue in recovering SG. They suggested that the insolvency practitioners should be able to pay SG. The Regulator also commented that if the insolvency practitioner's recovery powers were extended, the recovery of SG would be increased. There is one recommendation (Recommendation 23) suggesting the SG Act be amended to allow insolvency practitioners to pay outstanding SG.

Professionals and Others also noted the situation becomes more complicated given the different structures employers use. Some structures such as trusts and franchises can be used to escape SG obligations, creating an unfair situation. There are two recommendations (Recommendation 9, Recommendation 21) consistent with their suggestions that consider amending legislation to apply to those structures.

Professionals pointed out that nominal interests are treated differently in the Corporations Act and the SG Act when it comes to insolvency. There is one recommendation (Recommendation 22) that suggests amending the SG Act apply the nominal interest up to the date of liquidation.

Fair Entitlements Guarantee (FEG)

Employees, Superannuation Funds, Professionals and Government Departments suggested expanding the FEG to cover SG. There is one recommendation (Recommendation 24) that this be investigated, in line with their suggestions.

Measures that could improve compliance with SG

Superstream and Single Touch Payroll (STP) were discussed by all groups. Superannuation Funds, Employees, Professionals and Others found that measures should be extended to all employers to increase compliance, while the Regulator and Government Departments only discussed the strength of that system without providing suggestions. Employers emphasised reducing the complexity of the systems. There is one recommendation (Recommendation 31) to expand STP functions and coverage. This recommendation is consistent with submissions from Employees, Superannuation Funds and Professionals; however, there is no recommendation for Superstream in the committee report.

Appropriateness of responses from different parties

This ToR asks about the appropriateness of responses from the ATO when receiving complaints, Members of Parliament assisting constituents, and practitioners who become aware the non-compliance. There are two recommendations under this ToR.

Results for appropriateness of response

Employees are not satisfied with the regulators response to their complaints. Professionals observed that the ATO takes initial steps, but after that, the Privacy Act prevents them from providing further information to employees. The Regulator disagreed with that, stating the ATO communicates with employees at every stage. There are two recommendations (Recommendation 10, Recommendation 11) in the report suggesting the ATO improve its communication process, and that they inform affected employees before entering into recovery arrangements. These recommendations reflect the submissions from Employees and Professionals.

Summary of recommendations and interpretations

Table 22 summarises all of the recommendations matching with the different interest groups and shows there are 28 recommendations that consider concerns from Employees; 21 recommendations for Superannuation Funds, 18 recommendations reflecting the submissions from Professionals, 15 recommendations reflect the concerns of Government Departments, 6 recommendations in response to the Regulator and Others, and 1 recommendation in response to Employers.

Table 18

Summary of Terms of Reference

Types of Information	Groups							Amount of recommendations
	EE	SF	ER	R	GD	P	O	
Economic impact of SG noncompliance	1	1	0	1	1	1	0	2
Accuracy and adequacy of data	8	7	0	2	6	3	1	8
Role and effectiveness	17	13	1	3	8	12	5	20
Appropriateness of responses	2	0	0	0	0	2	0	2
Total	28	21	1	6	15	18	6	32

Note. EE: Employees; SF: Superannuation Funds, ER: Employers, R: the Regulator, P: Professionals; O: Others

Public interest theory asserts that standards are set considering the entire society rather than specific interest groups. As can be seen from the results of the analysis of recommendations, the recommendations consider different groups' concerns and suggestions. The recommendations demonstrate that the committee considered the needs of all of the groups. Where there was a conflict in the needs of different groups, the committee has made recommendations that are consistent with most of the submissions. This is especially clear in the discussion on the penalty for non-compliance, with Employers arguing to decrease the penalty while all other groups argue for increasing it. The recommendation suggests increasing the penalty, indicating the committee considered all submissions rather than focusing on a specific group.

Public interest theory states that regulations are introduced to correct for market failure. Through this lens, we can interpret the recommendations as being made to overcome market failure, in this case, noncompliant behaviour. This inquiry was conducted to understand the impact of SG non-compliance and determine how best to address this non-compliance. SG is designed to overcome the economic myopia of employees, assisting them to have adequate savings when they retire. Employees is the group covered by most of the recommendations, with 28 out of the 32 addressing points raised in submission by Employees. This indicates that this group is the main stakeholder that the committee considered.

Capture theory posits that regulations are initially introduced to benefit society and therefore also regulated firms. All groups are reflected in the recommendations, however the second largest group reflected by the recommendations are the superannuation funds. There were only 7 submissions from this group, which is a small amount compared to Employees (26 submissions) and Professionals (17 submissions). Considering the number of submissions from this group, superannuation funds have been largely represented by the recommendations. This large representation could indicate that superannuation funds had a large influence on the committee, which could indicate or lead to regulatory capture. Superannuation funds, which are regulated firms in SG, serve their own interests through the direct economic impact of increasing SG

compliance. The more compliant behaviour, the more contributions superannuation funds will receive, and the more funds under management. Therefore, this group lobbied in the process to influence the committee to protect their interests.

While capture theory can identify that a particular interest group has captured the regulatory process, it cannot explain why a certain group, in this case superannuation funds, would capture the process. Thus, the economic theory of regulation is drawn on to interpret this motivation. This theory of regulation predicts different groups will lobby for their own interests and that regulations will benefit small but powerful groups because of the higher benefits and lower costs for those groups. Under this theory, superannuation funds are the most likely to capture the regulatory process. This is because there are homogeneous interests in this group with a small number of free riders. Stigler (1971), emphasises that costs of lobbying are higher if the opinions in a group are diverse and there are many free riders. Given this group has similar interests, which is more contributions to the funds, and few free riders, costs will be low. The benefits are great though, so there is a strong motivation for this group to influence the committee. In addition, this group can campaign and influence elections (Aston, 2016). The policymaker as an interest group has its own interests, usually maintaining power and being re-elected. This might explain why superannuation funds have the potential to influence the regulators.

Thus, our second research question can be answered. The recommendations overall reflected submissions from all of the different groups in the inquiry process. Employees are the dominant beneficiaries of the proposed recommendations, aligned to the original purpose of the SG. However, superannuation funds, as discussed, have the potential to influence and capture the committee.

6. CONCLUSION

This research explored the influence of different groups in the SG area by investigating enquiries into SG non-payment (2017). We found that different interest groups lobbied in their submissions to influence the committee to take action in their self-interests. Employees and superannuation funds lobbied to improve SG compliance, as SG is a source of income for them. Employers suggested reducing the penalties and complexity of the system because SG is a cost that they try to minimise. The regulator focused on having more data to improve its ability to detect and recover unpaid SG. The recommendations in the committee's report considered different groups' opinions and mainly addressed employees' issues. Interestingly, concerns from superannuation funds were also considered. The findings could be interpreted as the recommendations still serving the original public interest purpose because employees were still the main beneficiaries; however, the process has the potential to be influenced by superannuation funds—a powerful group in the SG system. The economic theories of regulation explain this; there are substantial benefits for this group, which are characterised by homogenous interests and a few free riders.

This study comprises three contributions. First, it researched both participation and influence streams in the SG area, increasing the understanding of lobbying theories and providing a qualitative approach to investigative lobbying strategies. Consistent with previous research, different groups lobbied during the enquiry process to achieve their preferred outcomes, which benefited their own interests regarding participation research. In terms of influence research, this study indicates that the recommendations in the committee report serve the public interest, but there is the potential for recommendations to be captured by certain groups.

Second, the research helps reveal the influence of different groups in the SG area, which is under-researched. This research examined the enquiry process of SG non-compliance to investigate the influence of different stakeholders in this area. We found that the recommendations reflect concerns from different groups, indicating that the committee is not only meant for specific interest groups. Employees remained the most benefitted group in this enquiry. However, superannuation funds represent a powerful group that has the potential to capture regulations. Therefore, this study sought to improve SG regulatory process transparency and accountability, which has the potential to improve retirement savings outcomes in Australia by identifying any regulatory captures in this inquiry process.

Third, this research expands the understanding of the theories of regulation by providing data on the SG area. In this study, different theories of regulation could interpret the outcome of the inquiry (i.e. the recommendations in the committee report). Public interest theory can be used to interpret the results showing that recommendations are made to correct market failures, which was SG compliance in this study. The recommendations consider the concerns of the various groups but mostly benefit employees. The results also indicate that superannuation funds can significantly influence recommendations. Capture theory explains that a regulated industry has the potential to capture regulators. The economic theories of regulation note that small groups with fewer free riders are more likely to influence regulators.

There are two limitations to this research. First, it did not investigate the three public hearings that were conducted for this inquiry. However, some participants involved in the public hearings also lodged written submissions, which have been analysed. Second, the informal lobby activities were not examined in this research. Although this research investigated the formal approach to lobbying, as identified in Cortese and Irvine (2010), the black box—a term used to explain inconsistent output and visible input, which occurred in the standard-setting process—cannot be examined and understood by only investigating the documents in the process. It requires efforts to examine discourse practice and social practice. Therefore, future research could investigate the influence of different stakeholders using critical discourse analysis to examine the relationship between regulators and stakeholders, following similar research in an accounting context (Cortese & Irvine, 2010; Cortese et al., 2007, 2010).

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