31 July 2026

Attn: The General Manager
Fair Work Commission

By email: awards@fwc.gov.au

Dear Sir/Madam,

Modern award superannuation clause review 2026 (AM2026/18)

The Australian Bookkeepers Association, Chartered Accountants Australia and New Zealand, CPA Australia, the Institute of Certified Bookkeepers, the Institute of Public Accountants and the SMSF Association (together, **the Joint Bodies**) write to you as the peak professional accounting, bookkeeping, financial advice and superannuation bodies in Australia. We welcome the opportunity to make a submission to the Fair Work Commission (the "**Commission**") in relation to the operation of modern award superannuation provisions.

Modern awards play an important role in supplementing statutory minimum employment standards and, in many cases, provide employees with superannuation entitlements that extend beyond the requirements of the *Superannuation Guarantee (Administration) Act 1992* (**SGAA**). However, circumstances exist where the drafting of some award provisions may produce unintended interactions with the SGAA and the Australian Taxation Office's (**ATO**) superannuation compliance framework. Our observations in this submission are influenced by Payday Super, which came into effect on 1 July 2026, and whilst we believe that many of the conflicts with the existing compliance framework are ongoing matters, the introduction of Payday Super has thrown many of these issues into sharper focus.

Many modern awards contain superannuation provisions that supplement the minimum obligations imposed under the superannuation guarantee (**SG**). These clauses typically reflect an intention to provide employees with benefits beyond those required by the SGAA, including by extending SG coverage to forms of remuneration or periods of absence that fall outside the statutory concept of Qualifying Earnings (**QE**) as defined in the SGAA. In doing so, the award provisions are usually intended to operate in addition to, and not instead of, an employer's SGAA obligations. The purpose of clauses such as these is to enhance employee superannuation entitlements rather than alter the operation of the legislative superannuation framework. We consider that care is needed to ensure that the interaction between award-based obligations and SGAA compliance mechanisms continues to support the underlying policy objective of providing additional benefits without creating unintended outcomes.

An example of where such unintended outcomes may arise is clause 20.5 of the *Clerks — Private Sector Award 2020*, which requires superannuation contributions to continue in respect of certain periods of paid leave and work-related injury or illness. These provisions appear intended to provide employees with additional superannuation protection during periods when they are absent from work. However, because some payments covered by clause 20.5 may not constitute QE under the SGAA, the interaction between award obligations and SGAA contribution rules can produce outcomes that are difficult to reconcile with the policy intent of either regime.

In particular, contributions made in respect of payments that are not QE may nevertheless be treated as eligible employer contributions for SGAA purposes due to contribution labelling or other technical reasons originating in the design and use of payroll systems. This can create situations in which contributions made under award provisions are counted towards an employer's SGAA obligation, potentially affecting the total amount of superannuation paid for an employee. Depending on the order and timing of payments, employees with otherwise identical remuneration profiles may receive different superannuation outcomes. In some circumstances, the drafting may also create compliance signals that do not accurately reflect whether an employer has met the intended policy objectives of the SGAA and Payday Super. These outcomes may create "false negatives" for outside observers (such as the ATO) when assessing an employer's superannuation position with respect to SG contributions. These are best illustrated using the following two examples of where an employee receives a contribution or contributions payable on remuneration which is/are not QE.

Case Study 1: Employee on minimum wages

Illustrative example – minimum wage employee

A full-time employee earning the national minimum wage ($1,044.90 for a 38 hour week in 2026/27) has been absent from work for the first 26 weeks of a financial year; however they have been paid remuneration as per the relevant award. The employer contributes approximately $3,135 (12 per cent of the total remuneration) in superannuation for the 6 month period. In the second half of the financial year, the employee returns to ordinary work and earns QE for the remainder of the year.

Because the earlier award-based contribution may be treated as an eligible employer contribution under the SGAA, it can reduce the amount of superannuation that would otherwise be payable on the employee's QE earned in the second half of the financial year.

In this modelled scenario, the employee ultimately receives approximately $3,135 in employer contributions rather than approximately $5,306 - a reduction of around $2,171 or 41 per cent. The reduction arises solely from the interaction between the award provision and the SGAA, notwithstanding that the employee receives broadly the same total remuneration for the year.

Case Study 2: Employee earning average full-time adult earnings

Illustrative example – average full-time adult earnings

A full-time employee earning approximately average full-time adult earnings (based on current Australian Bureau of Statistics data) receives a payment for the first 8 weeks of the financial year that is not QE for SGAA purposes but attracts superannuation under a modern award provision. Approximately $2,501 in superannuation is contributed in respect of that payment. The employee subsequently earns ordinary wages for the balance of the year which is QE for SGAA purposes.

Under the SGAA contribution offset rules, the contribution already made in respect of the earlier non-QE payment may be taken into account when determining the employer's SG obligations on later qualifying earnings. In the modelled scenario, total employer contributions amount to approximately $10,832 rather than approximately $12,801, a reduction of around $984 or over 8 per cent. This illustrates how award-based superannuation provisions can produce outcomes that appear compliant from a contribution reporting perspective while yielding materially different retirement savings outcomes for employees.

Anomalous outcomes can also arise for very high income earners for example, those working in mining or other specialised occupations.

We understand that similar provisions appear in a significant number of modern awards. Our review suggests that 54 of 123 awards contain clauses dealing with superannuation contributions that extend beyond ordinary SGAA obligations. By contrast, some awards, including the *Aboriginal and Torres Strait Islander Health Workers and Practitioners and Aboriginal Community Controlled Health Services Award 2020*, do not contain provisions of this nature. We recognise that different drafting approaches already exist within the modern award system for a variety of reasons and that variations in wording reflect a degree of tailoring to different industries and workforces, and not necessarily all considerations of the broader superannuation framework.

We acknowledge that modern awards are developed through consultation between industrial parties and that the Fair Work Commission's primary role is to facilitate and certify industrial outcomes. At the same time, modern awards operate within a broader legislative and regulatory environment. As reforms such as Payday Super increasingly rely on real-time contribution reporting and compliance monitoring, it is desirable, as much as is feasibly possible, that award provisions operate consistently with the policy objectives administered by other agencies, including the ATO. We consider that the Commission's review processes can play an important quality assurance role by identifying wording that may inadvertently create inconsistency, ambiguity or unintended interactions with external regulatory frameworks, even where the underlying policy intent is clear.

We note that section 160 of the *Fair Work Act 2009* provides the Commission with a mechanism to vary a modern award to remove ambiguity or uncertainty or to correct an error where appropriate. Without expressing a specific view on any preferred outcome, we consider that the interaction between award-based superannuation clauses and the SGAA illustrates the importance of careful drafting and periodic review as superannuation policy continues to evolve.

We would welcome further engagement on the interaction between modern awards and Australia's superannuation framework as Payday Super implementation continues.

If you would like to discuss any of the issues we raise in our submission, please contact Richard Webb, Superannuation Lead at CPA Australia, on 0425 726 889 or at richard.webb@cpaaustralia.com.au.

Yours faithfully,

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