

Unpaid Super Across Tasmania

Getting Worse While
Nothing Is Done



About Industry Super Australia

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

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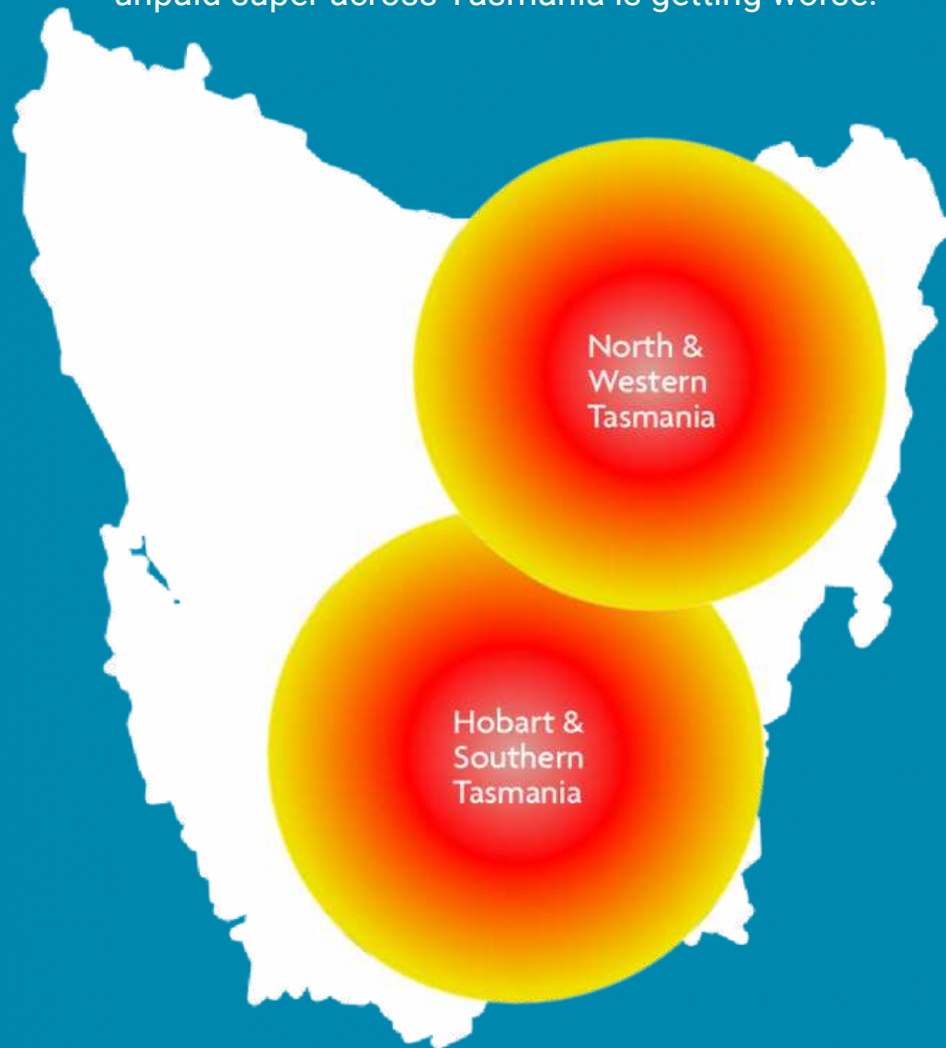
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UNPAID SUPER: GETTING WORSE

New analysis of ATO data has found that unpaid super across Tasmania is getting worse.



1

**57,400
Tasmanians**

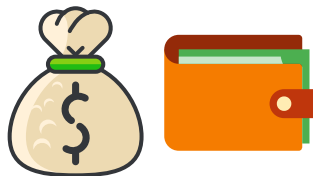
are being short-
changed \$102 million.



2

\$1,775

is the average
underpayment -
equivalent of \$77 per
fortnightly pay.



3

\$279,452

is the daily cost for
Tasmanian workers.



Key Points

New analysis of ATO data has found unpaid super across Tasmania is getting worse, not better, with 57,400 local workers short-changed \$102 million in super entitlements in 2015-16.

In the space of just two years (since previous analysis of 2013-14 ATO data):

- ▶ The number of Tasmanian workers short-changed super has climbed with 5,250 more impacted.
- ▶ The total amount of unpaid employer super contributions for Tasmanian workers is \$102 million, with the average underpayment being \$1,775.
- ▶ Every day that the problem goes unfixed, it costs Tasmanian workers \$279,452.

Further detailed investigation of risk factors suggests rogue employers are exploiting younger workers, those in part-time and casual work and blue-collar jobs.

- ▶ Workers under the age of 30 are a third more likely to miss out on their legal entitlement compared to older workers;
- ▶ Over 45% of labourers, machinery operators and drivers have collectively missed out on more than \$820 million making it to their super accounts;
- ▶ Part-time and casual workers earning less than \$30,000 are a third more likely to miss out on super compared to full-time workers and those on higher salaries.
- ▶ Combining these risk factors reveals 75 percent of Australians short-changed their super contributions are aged under 35, earn under \$30,000 or are in blue collar jobs.

It is apparent that some employers are taking advantage of outdated super laws coupled with lower skilled and new workforce entrants who are less likely to know their entitlements or ask questions.

On top of this, the rise of insecure employment is amplifying the already widespread problem of unpaid super.

Despite new laws before the Parliament that should improve reporting of super, employers are still under no obligation to pay super contributions at the time they are disclosed on payslips.

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

Most employers do the right thing and many employers already pay super fortnightly or monthly, but the time has come to make regular payment of super mandatory.

1. Background

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

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

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

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

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

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

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

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

The Committee went on to make 32 recommendations for change. None of these recommendations have yet to be legislated or progressed in any significant way while the problem has deteriorated.²

2. About the research

This analysis of underpaid superannuation is based on the 2015-16 Australian Taxation Office (ATO) 2% anonymous sample file of personal tax and superannuation records.

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

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

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

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

3. Summary findings

Table 1 shows the extent of underpayment of super across employment regions in Tasmania.

Table 1 – Estimated Underpayment of Employer Superannuation in Tasmanian Employment Regions, 2015-16

State/Territory: TASMANIA				
Employment Region	People Underpaid including no payment	Percentage of SG Employees Underpaid	Gap in Employer Contributions at 8.75% \$m	Average Underpayment
Hobart and Southern Tasmania	30,280	32.20%	\$56.92	\$1,880
North and North Western Tasmania	27,120	31.60%	\$45.06	\$1,661

Source: ISA estimates using the ATO 2% Sample file for 2015-16

How big is the problem nationally?

Table 2 – Estimated underpayment of employer superannuation 2013-14 and 2015-16

Parameter	March 2017 ISA estimates	May 2018 ISA estimates
Number of SG eligible employees underpaid	2.76 million	2.98 million
SG eligible population	8.6 million	8.9 million
Proportion of SG eligible employees underpaid	32%	33.4%
Total amount of employer contributions underpaid	\$5.6 billion	\$5.9 billion
Average underpayment per year	\$2,025	\$1,994

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

Table 3 – Gender and SG underpayment

ISA Estimates of SG underpayment in 2015-16			
Gender	Number underpaid	Proportion of SG Eligible population underpaid	Amount of Underpayment \$Billions
Male	1,641,700	35.4%	\$3.88
Female	1,337,050	31.3%	\$2.06
All	2,978,750	33.4%	\$5.94

Source: ISA estimates using the ATO 2% Sample file for 2015-16

Table 4 shows the prevalence of unpaid superannuation across States and Territories.

Table 4 – Estimated underpayment of employer superannuation by state and territory

State/Territory	People Underpaid including no payment	Percentage of SG Employees Underpaid	Gap in Employer Contributions at 8.75% \$m	Average Underpayment
NSW	990,500	34.5%	\$2,052.8	\$2,075
Vic	743,350	33.3%	\$1,342.8	\$1,805
Qld	583,150	33.0%	\$1,116.4	\$1,915
SA	177,700	29.8%	\$292.8	\$1,650
WA	322,300	32.6%	\$628.3	\$1,950
Tas	57,400	31.9%	\$102.0	\$1,775
NT	40,200	39.4%	\$103.1	\$2,565
ACT	49,300	31.9%	\$171.7	\$3,485

Source: ISA estimates using the ATO 2% Sample file for 2015-16

Note: The ACT has an adjustment designed to remove public servants without employer cash superannuation contributions.

Who is most affected?

The following tables look at risk factors for SG underpayment in isolation. It is important to look at the combination of risks. Three main risk factors are:

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

ISA estimates that 2.2 million of the 3 million SG eligible workers who are unpaid have one of these main risk factors – an astonishing 75 percent. The group with one or more of the main risk factors have a 38.4% chance of being unpaid compared to the general risk of 33.3%. The group who are young and earning under \$30,00 in a blue-collar job had a 54% chance of being underpaid SG in 2015-16.

Table 5 – Occupation and SG underpayment

ISA Estimates of SG underpayment in 2015-16			
Occupation	Number underpaid	Proportion of SG Eligible population underpaid	Amount of Underpayment \$Billions
Machinery operators and drivers	255,100	46.0%	\$0.39
Labourers	402,100	45.2%	\$0.43
Occupation not listed/ Occupation not specified	4,850	42.5%	\$0.01
Technicians and Trades Workers	440,650	41.3%	\$0.81
Consultants, apprentices and type not specified or not listed	233,950	39.2%	\$0.58
Sales workers	212,450	33.7%	\$0.19
Community and Personal Service Workers	309,750	32.5%	\$0.47
Clerical and Administrative Workers	359,750	30.8%	\$0.73
Managers	327,700	29.8%	\$1.08
Professionals	432,450	22.4%	\$1.24
All	2,978,750	33.4%	\$5.94

Source: ISA estimates using the ATO 2% Sample file for 2015-16

Table 6 – Wage and salaries and SG underpayment

ISA Estimates of SG underpayment in 2015-16			
<u>Wages and Salaries</u>	Number underpaid	Proportion of SG Eligible population underpaid	Amount of Underpayment \$Billions
\$5,401 up to \$19,999	569,800	49.2%	\$0.31
\$20,000 up to \$29,999	361,600	38.7%	\$0.30
\$30,000 up to \$39,999	343,900	33.3%	\$0.35
\$40,000 up to \$49,999	337,050	30.0%	\$0.41
\$50,000 up to \$74,999	629,500	29.3%	\$1.14
\$75,000 up to \$99,999	369,800	30.1%	\$1.18
\$100,000 up to \$149,999	260,400	29.1%	\$1.24
\$150,000 up to \$199,999	60,950	25.9%	\$0.38
\$200,000 and over	45,750	29.9%	\$0.63
All	2,978,750	33.4%	\$5.94

Source: ISA estimates using the ATO 2% Sample file for 2015-16

Table 7 - The probability of being underpaid by age and wage group

Age	Wages and Salaries					
Age of taxfiler	\$5,401 up to \$29,999	\$30,000 up to \$49,999	\$50,000 up to \$74,999	\$75,000 up to \$99,999	\$100,000 and over	All
20 to 29	49.0%	36.6%	31.3%	33.3%	39.6%	39.7%
30 to 39	49.8%	34.8%	29.8%	28.0%	27.1%	33.9%
40 to 49	42.9%	29.3%	29.2%	29.0%	27.5%	31.0%
50 to 59	35.3%	25.4%	28.3%	32.6%	30.0%	29.8%
60 to 64	30.7%	23.2%	24.9%	31.1%	26.0%	26.8%
All	45.2%	31.9%	29.5%	30.2%	28.8%	33.7%

Source: ISA estimates using the ATO 2% Sample file for 2015-16

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

4. Industry fund action to uncover unpaid SG

Industry super funds take their obligations to recover unpaid SG on behalf of their members seriously, and many have in place dedicated systems to improve compliance.

Larger funds and those covering higher risk industries such as construction actively monitor employer contributions and employ proactive steps when contributing employers miss payment due dates.

New smartphone apps also incorporate alerts to keep members on top of contribution activity of their employer.

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

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

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

Case study

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

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

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

5. Fixing the problem

Since the Senate inquiry into the issue of unpaid super, little concrete progress has been made to fix the problem. The Government has introduced into parliament some changes, which although welcome, fall well short making a positive difference to the many employees affected by under payment of their super entitlement.

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

1. Mandate payment of super with payment of salary

Under current laws, employers can make super contributions on a quarterly basis, regardless of what appears on an employee's payslip. Research shows that some employers take advantage of this flexibility

by delaying super contributions well beyond three months leading to large liabilities that cause cash-flow difficulties. Updating the current laws to mandate employer's payment of super at the time of an employee's salary is a simple change that will allow payments to be more closely tracked by both employees and the ATO, reducing non-compliance.

2. Better monitoring and stronger enforcement

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

3. Utilising penalties

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

4. Extending the safety net for unpaid entitlements

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

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

Appendix A: Methodology for the Update of Unpaid Super results to 2015-16

The ISA methodology for estimating underpaid superannuation at a national level uses the 2015-16 Australian Taxation Office (ATO) 2% anonymous sample file of personal tax and superannuation records. To calculate the rate of SG paid compared to what should have been paid it is necessary to:

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

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

The SG Population:

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

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

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

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

The records on the ATO file represent 13.5 million people. The exclusions noted above reduce the SG population represented in this analysis to 8,892,150 people. As hoped, this estimate of the employees in the SG population is significantly less than the ABS estimate of employees in 2016, which was 9,920,100 (ABS Cat No. 6333.0).

The Maximum SG contributions base

In 2015-16 the annual aggregate for the maximum SG contribution base was \$203,240. With a 9.5% contribution rate, this meant that the maximum required SG contribution was \$19,307.

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

In the analysis, people with ordinary time wages over \$203,240 and SG or employer contributions over \$19,307 have been treated as fully SG compliant. However, people with ordinary time wages over \$203,240 and SG or employer contributions less than \$19,307 have been assessed for compliance using the ratio of their contributions to wages.

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

No Split of Employer Contributions:

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

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

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

Estimating Ordinary Time Earnings from the ATO Salary and Wage data:

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

The ruling can be found at:

<http://law.ato.gov.au/atolaw/view.htm?DocID=SGR/SGR20092/NAT/ATO/00001&PiT=99991231235958>

Perhaps the main things to notice for current purposes are:

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

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

The current methodology calculates an ordinary time earnings adjustment factor using the ratio of the ABS measures for ordinary time earnings to total earnings for males and females separately. In May 2016 these ratios were 95.72% for full-time adult males and 98.72% for full-time adult females. These factors

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

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

have been applied at all wage levels because previous analysis of hours of work and overtime payments from the 2013-14 ABS Survey of Income and Housing (SIH) indicates that part-time and full-time workers can be found at most income levels. The adjustment of part-time wages down raises the apparent ratio of contributions and makes the analysis conservative.⁶

Adopting conservative cutouts:

In 2015-16 the SG rate was 9.5 per cent.

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

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

Using an 8.75% cut-off for a year in which the SG was 9.5% gives an estimate that 33% of all SG contributors were under-paid SG in 2015-16, based on their estimated ordinary time earnings

Geographic Breakdown of Unpaid Superannuation 2015-16

ISA has also undertaken a geographic analysis of underpaid superannuation which will be published separately.

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

The ATO file does not contain postcode data. ISA has based its decomposition within regions on the almost perfect (.999) correlation between Census employee counts and the ISA estimate of employees underpaid superannuation at the ATO region level. The Census estimate of employees by postcode has been used to create the postcode estimates. The Commonwealth Department of Jobs and Small Business publishes a correspondence between postcodes and DJSB employment regions. Not all postcodes are coded into DJSB employment regions in the correspondence and uncoded postcodes have been omitted.

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