

# Chapter 1

## Introduction

1.1 On 10 May 2018, the Senate referred the provisions of the Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 (the bill) to the Economics Legislation Committee for inquiry and report by 13 June 2018.<sup>1</sup>

1.2 The bill seeks to amend various Acts relating to taxation, superannuation, competition and consumers. In her second reading speech, the Hon. Kelly O'Dwyer, Minister for Revenue and Financial Services, stated:

Together, the measures in this bill represent a substantial enhancement to the tax and superannuation system, ensuring employers make the contributions they owe to employees, protecting the system against misuse, and supporting philanthropy.<sup>2</sup>

1.3 The bill contains nine schedules:

- Schedules 1 to 6 of the bill pertain to the Superannuation Guarantee Integrity package, which seeks to implement several recommendations contained in the Superannuation Guarantee Cross-Agency Working Group's report to strengthen compliance with taxation and superannuation guarantee obligations. The package contains amendments to:
  - allow the Commissioner of Taxation (Commissioner) in cases where employers fail to comply with their superannuation guarantee obligations, to issue directions to pay unpaid superannuation guarantee and undertake superannuation guarantee education courses;
  - allow the Commissioner to disclose more information about superannuation guarantee non-compliance to affected employees;
  - extend Single Touch Payroll reporting to all employers;
  - facilitate more regular reporting by superannuation funds;
  - improve the operation of the Commissioner's collection and compliance measures; and
  - streamline employee commencement processes.
- Schedule 7 seeks to enable the sharing and verification of tax file numbers, which have been obtained in accordance with a Commonwealth law, between the Commissioner and Commonwealth agencies.

---

1 *Journals of the Senate*, No. 97, 10 May 2018, p. 3093.

2 The Hon. Kelly O'Dwyer, Minister for Revenue and Financial Services, Second reading speech, *House of Representatives Hansard*, 28 March 2018, p. 3043.

- Schedule 8 seeks to make minor amendments to taxation, superannuation and other legislation in the Treasury portfolio to ensure that the law operates as intended by clarifying the law, correcting technical or drafting defects, removing anomalies and addressing unintended outcomes.
- Schedule 9 seeks to amend the Income Tax Assessment Act 1997 (ITAA 1997) to allow the following entities to be deductible gift recipients (DGR) under the income tax law:
  - Australian Philanthropic Services Limited;
  - Foundation 1901 Limited; and
  - Sydney Chevra Kadisha.<sup>3</sup>

### **Conduct of the inquiry**

1.4 The committee advertised the inquiry on its website and wrote to relevant stakeholders and interested parties inviting submissions. The committee received 18 submissions, which are listed at Appendix 1.

1.5 The committee held a public hearing in Canberra on 1 June 2018 for this inquiry. A list of witnesses who appeared at the hearing can be found at Appendix 2.

1.6 References to the Committee Hansard are to the Proof Hansard and page numbers may vary between Proof and Official Hansard transcripts.

1.7 The committee thanks all individuals and organisations that made written submissions and participated in the public hearing.

### **Background—Superannuation Guarantee Integrity package**

1.8 The majority of the submissions to the committee's inquiry relate to Schedules 1 to 6—Superannuation Guarantee Integrity.

#### ***Senate Economics References Committee inquiry into superannuation guarantee non-payment***

1.9 On 1 December 2016, the Senate referred an inquiry to the Senate Economics References Committee (References Committee) into the impact of non-payment of the superannuation guarantee. In May 2017, the References Committee tabled its report, *Superbad—Wage theft and non-compliance of the Superannuation Guarantee*. Evidence presented to the References Committee during this inquiry from the housing industry, community stakeholders and academics raised concerns about the negative impacts of non-payment of the superannuation guarantee including:

- the economic impacts on the employees, including a loss of retirement income and the benefits of compounding interest;
- the competitive disadvantage to employers who are compliant; and
- the increased burden on government services such as the age pension, which results in increased government expenditure.<sup>4</sup>

---

3 Explanatory Memorandum, pp. 3–6.

---

### ***Superannuation Guarantee Cross-Agency Working Group***

1.10 The Superannuation Guarantee Cross-Agency Working Group (Working Group) was established by the Minister for Revenue and Financial Services in December 2016 to report on the operation, administration and extent of non-compliance in the Superannuation Guarantee system in Australia. The Working Group was chaired by the Australian Taxation Office (ATO) and also comprised officials from Treasury, the Department of Employment, the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulation Authority (APRA).

1.11 The Working Group provided its report to the Minister for Revenue and Financial Services on 31 March 2017. The report was publicly released on 14 July 2017.

1.12 The Working Group made nine recommendations to improve Superannuation Guarantee compliance, and identified eight actions that the relevant agencies could take to facilitate compliance and enforcement.<sup>5</sup>

### ***Policy announced on 29 August 2017***

1.13 On 29 August 2017, the Hon. Kelly O'Dwyer, Minister for Revenue and Financial Services announced the Superannuation Guarantee Integrity package. The announcement stated that the Superannuation Guarantee Integrity package seeks to implement several recommendations contained in the Working Group's report and noted that the Government did not accept the Working Group's recommendations to soften penalties for non-compliant employers. The Minister stated:

[E]mployers' failure to meet their SG obligations to their employees has been a problem ever since the SG was introduced in 1992.

Employers who deliberately do not pay their workers' superannuation entitlements are robbing their workers of their wages. This is illegal and won't be tolerated...

The Turnbull Government is taking action to safeguard and modernise the SG so employers can't hide from their legal duty. We will give all Australians confidence that the superannuation system is working in their best interests.<sup>6</sup>

---

4 Senate Economics References Committee, *Superbad—Wage theft and non-compliance of the Superannuation Guarantee*, 2 May 2017.

5 Superannuation Guarantee Cross-Agency Working Group, *Superannuation Guarantee Non-Compliance—A report to the Minister for Revenue and Financial Services*, 31 March 2017, <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance/> (accessed 30 May 2018).

6 The Hon. Kelly O'Dwyer, Minister for Revenue and Financial Services, 'Turnbull Government backs workers on superannuation', *Media Release*, 29 August 2017, <http://kmo.ministers.treasury.gov.au/media-release/086-2017/> (accessed 30 May 2018).

### ***Treasury consultation on the Superannuation Guarantee Integrity Package***

1.14 Treasury released exposure draft legislation for the Superannuation Guarantee Integrity Package and conducted a consultation process from 24 January to 16 February 2018.<sup>7</sup>

### **Overview of the bill**

#### ***Schedule 1: Directions and penalties in relation to superannuation guarantee charge***

1.15 Schedule 1 to the bill seeks to amend the *Taxation Administration Act 1953* (TAA) to allow the Commissioner to issue directions to employers who fail to comply with statutory obligations under the *Superannuation Guarantee (Administration) Act 1992* (SGAA) or an obligation under the TAA as it relates to the SGAA (superannuation guarantee obligations).

1.16 The amendments are based on recommendation 6 contained in the Working Group's report:

Ensure the penalty framework surrounding superannuation guarantee is sufficiently flexible to appropriately deal with the spectrum of employer culpability in non-compliance.<sup>8</sup>

1.17 The amendments in Schedule 1 seek to empower the Commissioner to issue directions to employers to undertake specific actions where the Commissioner is satisfied that there has been a failure to comply with an obligation or a failure to pay a charge. These directions are designed to enhance employer compliance with their superannuation guarantee obligations.

1.18 The amendments will also allow the Commissioner to direct employers to undertake an approved course, relating to their superannuation guarantee obligations, where the Commissioner reasonably believes there has been a failure by an employer to comply with those obligations.

#### ***Direction to pay superannuation guarantee charge***

1.19 The key features of the direction to pay superannuation guarantee charge are as follows:

- The Commissioner can issue a direction to an employer if the employer has failed to pay an amount of superannuation guarantee charge, or an estimate of superannuation guarantee charge, for a quarter.
- The employer must ensure that the amount of the unpaid liability is paid within the period specified in the direction.

---

7 Treasury, 'Superannuation Guarantee Integrity Package', <https://treasury.gov.au/consultation/c2018-t256652/> (accessed 13 June 2018).

8 Superannuation Guarantee Cross-Agency Working Group, *Superannuation Guarantee Non-Compliance—A report to the Minister for Revenue and Financial Services*, 31 March 2017, p. 10, <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance/> (accessed 30 May 2018).

- 
- Failure to comply with the direction can result in criminal penalties.
- 1.20 The key features of the education direction are as follows:
- The Commissioner can issue a direction to an employer if the Commissioner reasonably believes the employer has failed to comply with a superannuation obligation.
  - The employer who has received the direction must complete the approved course, or for non-individual employers, ensure an individual who participates in the decision making of the business completes the course.
  - The employer must provide proof of completion to the Commissioner.
  - Failure to comply with the direction can result in administrative and/or criminal penalties.<sup>9</sup>

### *Offence*

1.21 An employer commits an offence if they are given a direction to pay the amount of an outstanding liability and the amount of the liability is not discharged within the period specified in the direction. The maximum penalty for the offence is 50 penalty units, imprisonment for 12 months, or both.<sup>10</sup>

### *Defence of reasonable steps*

1.22 If the liability that is identified in a direction is not discharged within the required period, the employer that was issued with the direction will not commit an offence if they took all reasonable steps within the required period to both comply with the direction and to ensure that the original liability was discharged before the direction was given.<sup>11</sup>

### *Interaction with the insolvency and bankruptcy laws*

1.23 The direction to pay superannuation guarantee charge or an estimate of superannuation guarantee charge does not create a separate liability and operates concurrently with the existing corporate insolvency and bankruptcy laws. The current insolvency regime, as it applies to superannuation guarantee charge, remains unchanged.

1.24 The direction to pay an outstanding liability is not intended to be issued to entities that are insolvent or on the brink of becoming insolvent.<sup>12</sup>

### *Education directions*

1.25 The amendment will allow the Commissioner to issue an education direction to an entity if the Commissioner reasonably believes that the entity has failed to

---

9 Explanatory Memorandum, pp. 7–9.

10 Explanatory Memorandum, p. 12.

11 Explanatory Memorandum, p. 14.

12 Explanatory Memorandum, p. 15.

comply with one of the following obligations in relation to a specified tax-related liability or under a specified taxation law:

- Failing to pay an amount of a tax-related liability;
- Failing to comply with an obligation to give a statement or information to the Commissioner under a taxation law;
- Failing to comply with an obligation to keep records under a taxation law; or
- Failing to comply with an obligation under the TAA that relates to a taxation law.<sup>13</sup>

1.26 An education direction would require an employer, or an individual who makes management decisions of the business, to undertake an approved course of education and provide the Commissioner with evidence of completion of the course by the individual. It is expected that education directions will be issued to an employer where the employer's lack of knowledge or understanding of their obligations has contributed to a failure to comply with their obligations under the SGAA or the TAA. An education direction is intended to address knowledge gaps and reduce future cases of non-compliance by employers.<sup>14</sup>

### ***Schedule 2: Disclosure of information about non-compliance***

1.27 Schedule 2 to the bill seeks to amend the TAA to provide the Commissioner with the ability to disclose information that relates to a failure or a suspected failure by an individual's employer or former employer to comply with their obligations under the SGAA or related obligations under the TAA.

1.28 The proposed amendments are based on recommendation 3 contained in the Working Group's report:

The ATO should inform employees of its actions to collect their superannuation guarantee, including in ATO-initiated cases where this communication is currently constrained by current secrecy provisions. The ATO and Treasury will advise of the administrative and legal changes needed to inform employees that have not self-reported suspected non-payment to the ATO.<sup>15</sup>

1.29 These proposed amendments expand a taxation officer's ability to disclose information in relation to an employee by providing an exception to allow the making of a record or disclosure of protected information to current and former employees which relate to the following:

---

13 Explanatory Memorandum, p. 22–23.

14 Explanatory Memorandum, p. 22.

15 Superannuation Guarantee Cross-Agency Working Group, *Superannuation Guarantee Non-Compliance—A report to the Minister for Revenue and Financial Services*, 31 March 2017, p. 9, <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance/> (accessed 30 May 2018).

- 
- A failure by the individual's employer or former employer to comply with the employer's obligations under the SGAA or the TAA;
  - Where the Commissioner reasonably suspects there has been a failure to comply with the employer or former employer's obligations under the SGAA or the TAA; or
  - Any actions taken by the Commissioner in relation to such a failure or suspected failure.

1.30 These proposed amendments supplement the existing law, which allows the Commissioner to disclose protected information relating to the Commissioner's response to a complaint by an employee about their employer's failure to comply with the employer's obligations under the SGAA or the TAA in relation to the employee.<sup>16</sup>

#### *Consequential amendments*

1.31 The bill also contains a proposed amendment to ensure that a disclosure that is made under item 7 to the table in subsection 355-65(3) in Schedule 1 of the TAA also includes a failure to comply with an obligation under the TAA as it relates to the SGAA. This is to capture all of the information that the Commissioner can disclose in their response to a complaint by an employee where there has been a failure of an obligation under the TAA.

1.32 Further, the proposed legislation seeks to clarify that a taxation officer is able to provide disclosures to an employee if there is a dispute to whether they are an employee.<sup>17</sup>

#### *Application and transitional provisions*

1.33 The proposed amendments in relation to the disclosure of protected information relating to a failure or a suspected failure of an employer to comply with obligations under the SGAA or under the TAA apply to records and disclosures made on or after 1 July 2018 (regardless of whether the failure or suspected failure to comply with the obligation occurred before, on or after 1 July 2018).

1.34 The disclosures can apply to a failure or a suspected failure to comply with an employer's superannuation obligation that has or is suspected to have occurred before 1 July 2018 because the event would have already occurred. The amendments allow the Commissioner to disclose historical information relating to the potential affected employee which can impact on their superannuation entitlements.<sup>18</sup>

#### ***Schedule 3: Single touch payroll reporting***

1.35 Schedule 3 seeks to amend the TAA to broaden the Single Touch Payroll reporting requirements so they apply to all employers, regardless of the number of employees. Single Touch Payroll is the reporting framework for employers to provide

---

16 Explanatory Memorandum, p. 33.

17 Explanatory Memorandum, p. 36.

18 Explanatory Memorandum, p. 36.

payroll and superannuation information to the Commissioner at the time the employment liabilities are paid or withheld.

1.36 Schedule 3 also seeks to amend the TAA to require employers to include salary sacrificed amounts paid to their employees' superannuation funds in the amounts reported under the Single Touch Payroll reporting rules.

1.37 The proposed amendments are based on recommendation 1 contained in the Working Group's report:

That subject to the findings of the current small business pilot being conducted by the ATO, to improve the ATO's visibility of superannuation obligations it is recommended by the Working Group that all businesses (including small business) comply with Single Touch Payroll.<sup>19</sup>

1.38 The explanatory memorandum outlines the reason government intervention is necessary:

Government intervention will address the failure of the current regulatory regime to achieve its compliance objectives, as demonstrated by the significant and ongoing employer non-compliance with SG, and to transform reporting of employee tax and superannuation reporting obligations to a digital, real-time basis. The latter will align reporting to government of tax and superannuation with normal payroll functions undertaken by employers (rather than it being on different timelines) thereby reducing duplication of effort and record-keeping.<sup>20</sup>

### *Single Touch Payroll*

1.39 Single Touch Payroll rules were first introduced in the *Budget Savings (Omnibus) Act 2016*. Single Touch Payroll reporting currently requires the real-time reporting of withholding payments and amounts withheld from them, employee salary or wages and ordinary time earnings, and superannuation contributions to the Commissioner at the time these amounts are withheld or paid by employers.

1.40 The Single Touch Payroll rules are designed to enhance compliance by providing the Commissioner with increased visibility to monitor the payment of employee entitlements. This enables the Commissioner to identify non-compliance by employers earlier and to better inform affected employees.

1.41 Division 389 in Schedule 1 of the TAA currently applies to 'substantial employers' from 1 July 2018 or from 1 July of the year that they become a substantial employer. An entity is a substantial employer at a particular time if on the most recent 1 April before that time, commencing 1 April 2018, the entity had 20 or more employees, inclusive of the total number of employees employed by all member companies of the wholly-owned group. Entities that do not have 20 or more

---

19 Superannuation Guarantee Cross-Agency Working Group, *Superannuation Guarantee Non-Compliance—A report to the Minister for Revenue and Financial Services*, 31 March 2017, p. 8, <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance/> (accessed 30 May 2018).

20 Explanatory Memorandum, p. 50.

---

employees can choose to report under the Single Touch Payroll rules on a voluntary basis.

1.42 The proposed amendment in Schedule 3 will change the Single Touch Payroll reporting rules so that it applies to all employers, regardless of the number of employees they have. For small employers who are not 'substantial employers' (entities with 20 or more employees), Single Touch Payroll reporting commences from 1 July 2019.<sup>21</sup>

#### *Reporting sacrificed amounts by employers*

1.43 The current Single Touch Payroll reporting rules require employers to report any amounts that constitute ordinary time earnings that are paid to an employee. Employers are also required to report any amounts that constitute salary and wages that are paid to an employee.

1.44 The proposed amendments seek to extend these reporting requirements to include any salary sacrificed amounts that would have constituted ordinary time earnings or salary and wages, had they been paid directly to the employee. The Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017, which is currently before the Senate, introduced amendments to the SGAA which are intended to ensure that superannuation guarantee is paid on the pre-salary sacrifice base and prevent employers from using their employees' salary sacrificed superannuation contributions to reduce their own superannuation guarantee contributions. Requiring employers to report sacrificed amounts under the Single Touch Payroll regime is intended to ensure the Commissioner has access to information on employee's pre-salary sacrifice base in order to ensure superannuation guarantee entitlements are correctly calculated.<sup>22</sup>

1.45 The amendments requiring all employers to report ordinary time earnings and salary or wage amounts including any sacrificed amounts apply in relation to quarters beginning on or after the day Part 2 of Schedule 3 commences.<sup>23</sup>

#### *Consequential amendments*

1.46 Schedule 3 seeks to make amendments as a consequence of expanding the Single Touch Payroll reporting to all employers, including the repeal of the definition of 'substantial employer', provisions and headings which explain and reference 'substantial employer' and Guide material. The definition is no longer required as a result of expanding Single Touch Payroll reporting to all employers.

1.47 In addition, Schedule 3 seeks to make consequential amendments to include references to new item 2A in the table in subsection 389-5(1) in Schedule 1 of the

---

21 Explanatory Memorandum, pp. 37–38, 40.

22 Explanatory Memorandum, pp. 40–41.

23 Explanatory Memorandum, pp. 42–43.

TAA for the reporting of salary sacrificed amounts in a number of provisions that currently reference items 1 or 2 in that table.<sup>24</sup>

#### ***Schedule 4: Fund reporting***

1.48 Schedule 4 seeks to amend the law to allow the Commissioner to provide superannuation providers with a grace period for correcting false or misleading statements in relation to member information statements without giving rise to penalties.

1.49 Schedule 4 seeks to remove the requirement for employers to report superannuation guarantee contributions paid to superannuation providers under the Single Touch Payroll reporting rules.

1.50 Schedule 4 also reintroduces a previous measure to remove the requirement for superannuation funds to lodge bi-annual statements for lost members.<sup>25</sup>

1.51 The proposed amendments are based on recommendation 2 contained in the Working Group's report:

To improve the ATO's visibility of superannuation guarantee contributions made to employees' superannuation funds, require superannuation funds to report detailed contributions payment information more frequently. It is understood this can be enacted through the creation of a legislative instrument by the Commissioner of Taxation to move from a requirement for superannuation funds to report superannuation contributions annually.<sup>26</sup>

#### ***APRA-regulated superannuation fund reporting***

1.52 The Working Group's final report recommended more frequent and detailed superannuation fund reporting, in conjunction with the expansion of Single Touch Payroll reporting to all employers. The proposed measure in Schedule 4 seeks to move the responsibility for reporting superannuation guarantee contributions paid into employee superannuation accounts to the superannuation funds, and away from employers. These changes strengthen both the Commissioner's capacity to monitor compliance, identify non-compliance when it occurs, and assist in developing strategies to prevent further non-compliance.

1.53 As part of this measure, the frequency of the APRA regulated superannuation fund reporting increases to an 'event-based' reporting, replacing the current annual member contribution statement. These changes are being enforced through the Commissioner's existing powers to require reporting from superannuation providers under section 390-5 in Schedule 1 of the TAA.

---

24 Explanatory Memorandum, p. 43.

25 Explanatory Memorandum, p. 63.

26 Superannuation Guarantee Cross-Agency Working Group, *Superannuation Guarantee Non-Compliance—A report to the Minister for Revenue and Financial Services*, 31 March 2017, p. 8, <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance/> (accessed 30 May 2018).

1.54 The measure does not apply to self-managed super funds.<sup>27</sup>

*Statements for lost members*

1.55 A measure to remove the requirement for superannuation funds to provide bi-annual lost member statements<sup>28</sup> to the Commissioner was previously introduced to Parliament as part of the lapsed Treasury Legislation Amendment (Repeal Day 2015) Bill 2016.

1.56 This measure is being reintroduced as part of the superannuation guarantee integrity package.

1.57 Superannuation funds are currently required to lodge a bi-annual lost members statement with the Commissioner, identifying all superannuation balances of lost members. This statement provides information to the Commissioner to display on a register of lost members. The Commissioner also collects member information through the annual member information statement, some of which is duplicated in the lost member statement.<sup>29</sup>

*Consequential amendments*

1.58 Schedule 4 seeks to make consequential amendments to repeal headings and add an additional note to clarify when a superannuation provider will be able to rely on the grace period.

1.59 Schedule 4 also seeks to make a consequential amendment to allow the Commissioner to request information from superannuation providers relating to the *Superannuation (Unclaimed Money and Lost Members) Act 1999* (SUMLMA) under the existing section 390-5 in Schedule 1 of the TAA.<sup>30</sup>

***Schedule 5: Compliance measures***

1.60 Schedule 5 to the bill seeks to amend the TAA to enhance compliance with superannuation guarantee charge and other tax related liabilities. The explanatory memorandum states that the amendments will achieve this in the following ways:

- Strengthening the integrity of the director penalty provisions for directors who fail to comply with their superannuation guarantee charge and PAYG (pay as you go) withholding obligations; and
- Enhancing compliance with the requirement to provide security through the use of Court orders.

1.61 The proposed amendments are based on recommendation 4 contained in the Working Group's report:

---

27 Explanatory Memorandum, p. 64.

28 A lost member is a member of a super fund who is inactive, uncontactable, or transferred from another super provider as a lost member.

29 Explanatory Memorandum, p. 64.

30 Explanatory Memorandum, p. 69.

To improve the overall framework for superannuation guarantee compliance and the collection of superannuation guarantee charge debts, enhancements should be made to the Director Penalty Notice regime and to the Security Bonds Regime.<sup>31</sup>

1.62 The amendments also seek to strengthen the Commissioner's ability to collect superannuation guarantee charge and PAYG withholding liabilities in the following ways:

- With respect to director penalties under Division 269 in Schedule 1 of the TAA, a director's obligations in relation to ensuring their company pays an estimate of superannuation guarantee charge or withholding liability commence at the same time as their obligations in relation to ensuring the company pays the underlying liability to which the estimate relates;
- Removal of the three month period before director penalties are 'locked down' in respect of unpaid superannuation guarantee charge liabilities; and
- Allowing the Commissioner to apply for a Court order to compel entities to comply with a security deposit requirement.<sup>32</sup>

*Timing of obligation to pay estimates for the purposes of Division 269 in Schedule 1 of the TAA*

1.63 These amendments seek to alter the time at which a director is taken to be under an obligation to ensure the company pays an estimate of an underlying superannuation guarantee charge or PAYG withholding liability for the purposes of the director penalty provisions in Division 269 in Schedule 1 of the TAA.

1.64 Consistent with the scope of the director penalty provisions generally, the amendments apply in relation to the directors of companies which have been issued with a notice to pay an estimate under Division 268 in Schedule 1 of the TAA.<sup>33</sup>

1.65 The proposed amendments apply in relation to an estimate made under Division 268 in Schedule 1 of the TAA on or after 1 July 2018 (regardless of whether the underlying liability to which the estimate relates arose before, on or after 1 July 2018).<sup>34</sup>

*Circumstances where a director penalty is remitted*

1.66 These amendments seek to remove the three month period before a director penalty is 'locked down' and cannot be remitted if a company is placed into voluntary

---

31 Superannuation Guarantee Cross-Agency Working Group, *Superannuation Guarantee Non-Compliance—A report to the Minister for Revenue and Financial Services*, 31 March 2017, p. 9, <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance/> (accessed 30 May 2018).

32 Explanatory Memorandum, p. 74.

33 Explanatory Memorandum, p. 76.

34 Explanatory Memorandum, p. 80.

---

administration or insolvency. This change is restricted to superannuation guarantee charges and estimates of superannuation guarantee charge.

1.67 Under the new law, a director penalty cannot be remitted if a company is placed into voluntary administration or insolvency where the company has an obligation to pay a superannuation guarantee charge and the company does not report the superannuation guarantee liability to the Commissioner on or before the due date.<sup>35</sup>

1.68 The proposed amendments apply in relation to PAYG withholding liabilities and superannuation guarantee charge liabilities that first become payable on or after 1 July 2018.

1.69 The proposed amendments apply in relation to estimates of superannuation guarantee charge liabilities and PAYG withholding liabilities made on or after 1 July 2018 (regardless of whether the underlying liability to which the estimate relates arose before, on or after 1 July 2018).<sup>36</sup>

#### *Order to provide security*

1.70 These amendments seek to allow the Commissioner to apply to the Federal Court to order an entity to comply with a requirement to give a security. The Commissioner must have given a notice of the requirement to provide a security deposit.

1.71 Enabling the Commissioner to make these applications, and for the Court to make these orders, is intended to address the instances of non-compliance with the security deposit rules. Non-compliance predominantly arises where the value of the security deposit (which reflects the value of the tax related liability) exceeds the penalty for failing to provide the security deposit. Entities who fail to comply with a Court order risk committing a criminal offence resulting in criminal penalties. These consequences are designed to drive taxpayer behaviour into complying with the Court order and providing the security deposit to the Commissioner.<sup>37</sup>

1.72 The amendments apply in relation to a requirement to give security in relation to a tax-related liability if the Commissioner provides the notice of the requirement on or after 1 July 2018.<sup>38</sup>

#### *Consequential amendments*

1.73 Schedule 5 seeks to make consequential amendments to remove item 4 to the table in subsection 269-10(1) in Schedule 1 of the TAA and the note which are no longer required. Schedule 5 also makes consequential amendments to include a note under the existing reasonably arguable position defence contained in

---

35 Explanatory Memorandum, p. 80.

36 Explanatory Memorandum, p. 82.

37 Explanatory Memorandum, p. 82.

38 Explanatory Memorandum, p. 84.

section 269-35(3A) which clarifies that the defence may be available to times before the notice of an estimate of a superannuation guarantee charge liability is given.

1.74 Schedule 5 seeks to make consequential amendments to remove the reference to the three month rule in respect of superannuation guarantee liabilities and estimates. The amendments retain the three month rule in respect of PAYG withholding liabilities and estimates.<sup>39</sup>

***Schedule 6: Amendments relating to employee commencement***

1.75 Schedule 6 to the bill contains amendments to allow the pre-filling of an individual's tax file number (TFN) declaration and superannuation standard choice form by the Commissioner to the individual's employer to assist the individual to complete these forms using information held by the Commissioner.

1.76 Currently, individuals must provide a TFN declaration and superannuation standard choice form to either the Commissioner or to the individual's employer (usually, via paper). The TFN declaration allows an individual the option to disclose their TFN to an employer or claim an exemption from quoting their TFN, and provides information which can affect their withholding rates. These disclosure obligations for individuals are not mandatory under the tax law.

1.77 A taxation officer is permitted to disclose an individual's TFN to an individual's employer if the individual provided the number to the Commissioner in a TFN declaration. However, there are situations where an employee may not know their TFN or may be enquiring about their TFN to the Commissioner which are not covered by this exception.

1.78 The current disclosure rules do not permit any pre-filling of information relating to an individual to their employer.<sup>40</sup>

1.79 The amendments achieve this by providing a range of new exceptions to the tax file number offence and the confidentiality of taxpayer information rules to enable the disclosure of TFNs, withholding information and the superannuation member accounts of individuals.<sup>41</sup>

***Application and transitional provisions***

1.80 The amendments allowing the disclosure of an employee's TFN to an employer applies in relation to a TFN declaration made on or after 1 July 2018.

1.81 The amendments pertaining to the disclosure of protected information including information relating to the withholding matters of the employee or for the purpose of the employee making a superannuation fund choice will apply from commencement.<sup>42</sup>

---

39 Explanatory Memorandum, p. 84.

40 Explanatory Memorandum, p. 85.

41 Explanatory Memorandum, pp. 89–90.

42 Explanatory Memorandum, p. 88.

---

**Schedule 7: Information sharing**

1.82 Schedule 7 enables the sharing and verification of TFNs which have been obtained in accordance with a Commonwealth law, between the Commissioner and Commonwealth agencies.

1.83 Division 355 in Schedule 1 to the TAA contains the taxpayer confidentiality rules. Subject to certain exceptions, it is an offence for taxation officers to disclose or make a record of 'protected information' in respect of an entity, if the information is acquired in their capacity as a taxation officer.

1.84 'Protected information' is information that is disclosed or obtained under or for the purposes of a taxation law. The information must relate to the affairs of the entity (although not limited to their taxation affairs) and must identify, or be reasonably capable of being used to identify the entity.

1.85 The prohibition on disclosure does not apply where an exception to the offence applies. These exceptions include disclosures for a range of purposes including for Government purposes relating to social welfare, health or safety.

1.86 TFNs are not subject to the general taxpayer confidentiality laws for 'protected information', on the basis that they are not, in and of themselves, reasonably capable of identifying an entity.

1.87 The amendments contained in Schedule 7 seek to allow a Commonwealth agency to provide a person's TFN, where they have obtained it under a Commonwealth law, to the Commissioner for the purpose of verifying the TFN and enable the Commissioner to verify and share a person's TFN with that Commonwealth agency who has requested the verification.<sup>43</sup>

**Schedule 8: Miscellaneous amendments**

1.88 Schedule 8 to this Bill makes a number of miscellaneous amendments to the taxation, superannuation and other laws. These amendments are part of the Government's commitment to the care and maintenance of the Treasury portfolio legislation including the taxation and superannuation systems.

1.89 These amendments make minor technical changes to correct spelling errors, bring provisions in line with drafting conventions, repeal inoperative provisions and update references in the tax law to reflect changes to the names of State and Territory legislation and specifically listed deductible gift recipients. The Schedule also makes consequential amendments as a result of other recent changes to the law, makes minor technical amendments to remove administrative inefficiencies, clarifies the law (ensuring it operates in accordance with the policy intent), and rewrites certain provisions to standardise rules across various types of tax, improving efficiency, coherency and simplicity in tax administration.

1.90 Schedule 8 contains the following parts:

- Part 1—Amendments to commencement provisions of amending Bills;

---

43 Explanatory Memorandum, p. 88.

- Part 2—Amendments to application provisions of amending Bills;
- Part 3—Road user charge;
- Part 4—Seasonal Workers Program;
- Part 5—Offshore information notices;
- Part 6—Various amendments; and
- Part 7—Transitional arrangements relating to the disclosure of information.<sup>44</sup>

### ***Schedule 9: Deductible gift recipients***

1.91 Schedule 9 to this Bill amends the ITAA 1997 to include three entities as DGRs. These are the Australian Philanthropic Services Limited, Foundation 1901 Limited and Sydney Chevra Kadisha.

1.92 The income tax law allows income tax deductions for taxpayers who make gifts of \$2 or more to a DGR. DGRs are entities which fall within one of the general categories set out in Division 30 of the ITAA 1997 or are specifically listed by name in that Division.

1.93 DGR status helps eligible organisations attract public financial support for their activities.<sup>45</sup>

### **Financial impact**

1.94 The financial impact (including departmental expenses) of all the measures contained in the Superannuation Guarantee Integrity package (Schedules 1 to 6) is as follows:

**Table 1: Financial impact (as set out in Explanatory Memorandum)<sup>46</sup>**

<i>2016–17</i>	<i>2017–18</i>	<i>2018–19</i>	<i>2019–20</i>	<i>2020–21</i>
-	-\$7.5m	-\$19.9m	-\$17.7m	-\$9.2m

1.95 The financial impact of Schedule 7, information sharing, is nil.<sup>47</sup>

1.96 The financial impact of Schedule 8, miscellaneous amendments, is expected to have a negligible impact on revenue over the forward estimates.<sup>48</sup>

1.97 The financial impact over the next three years of the measures contained in Schedule 9 is a cost to revenue of \$1.1m as set out in the 2017–18 MYEFO.

44 Explanatory Memorandum, pp. 94–95.

45 Explanatory Memorandum, p. 115.

46 Explanatory Memorandum, p. 3.

47 Explanatory Memorandum, p. 4.

48 Explanatory Memorandum, p. 5.

**Table 2: Financial impact (as set out in Explanatory Memorandum)<sup>49</sup>**

<i>2016–17</i>	<i>2017–18</i>	<i>2018–19</i>	<i>2019–20</i>	<i>2020–21</i>
-	...	-\$0.4m	-\$0.5m	-\$0.2m

*-Nil*

*...not zero but rounded to zero*

### **Legislative scrutiny committees**

1.98 In its *Scrutiny Report 4 of 2018*, the Parliamentary Joint Committee on Human Rights raised concerns about strict liability and absolute liability offences contained in the bill.

1.99 Schedule 1 of the bill seeks to amend the TAA to introduce a strict liability offence for employers who fail to comply with a direction from the Commissioner to pay a superannuation guarantee charge.

1.100 A person will not commit an offence if they took all reasonable steps within the required period to both comply with the direction and to ensure that the original liability was discharged before the direction was given.

1.101 Schedule 1 would also allow the Commissioner to direct an employer to attend an approved education course where that employer has failed to comply with their superannuation guarantee obligations. Failure to comply with the education direction would be an absolute liability offence.

1.102 Schedule 5 of the bill seeks to amend the TAA to introduce a strict liability offence for failing to provide security where ordered to do so by the Federal Court. A person will not commit an offence to the extent that they are not capable of complying with the order.<sup>50</sup>

1.103 The Parliamentary Joint Committee on Human Rights expressed concern that the strict liability and absolute liability offences introduced by Schedules 1 and 5 of the bill engage and limit the presumption of innocence.<sup>51</sup>

---

49 Explanatory Memorandum, p. 6.

50 Parliamentary Joint Committee on Human Rights, *Scrutiny Report 4 of 2018*, p. 30.

51 Parliamentary Joint Committee on Human Rights, *Scrutiny Report 4 of 2018*, p. 32.

1.104 In its *Scrutiny Digest 5 of 2018*, the Senate Standing Committee for the Scrutiny of Bills raised a number of concerns in relation to the bill. These include:

- Part 1 of Schedule 1 and Schedule 5 that seek to create strict liability offences;<sup>52</sup>
- Item 3 of Schedule 1 that seeks to create absolute liability offences;<sup>53</sup>
- Schedule 4, items 1 and 2 that seek to establish a reversal of evidential burden of proof;<sup>54</sup>
- Item 3 of Schedule 8 seeks to allow the Minister to determine road user charges for taxable fuel by delegated legislation;<sup>55</sup> and
- Schedule 8, item 19, proposed subsection 353-30(4) that seeks to establish a no-invalidity clause.<sup>56</sup>

---

52 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2018*, 9 May 2018, pp. 56–58.

53 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2018*, 9 May 2018, pp. 58–60.

54 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2018*, 9 May 2018, pp. 60–61.

55 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2018*, 9 May 2018, pp. 61–62.

56 Senate Standing Committee for the Scrutiny of Bills, *Scrutiny Digest 5 of 2018*, 9 May 2018, pp. 62–63. A legislative provision that indicates that an act done or decision made in breach of a particular statutory requirement or other administrative law norm does not result in the invalidity of that act or decision, may be described as a 'no-invalidity' clause.