

## Queensland Council of Unions Submission

### Senate Standing Committees on Economics of the Australian Parliament Inquiry into Treasury Laws Amendment (2018 Measures No. 4) Bill 2018

The Queensland Council of Unions (QCU) is the peak union council in Queensland representing 26 affiliated unions who in turn represent one quarter of a million Queensland workers. Unions take employers' non-compliance with superannuation very seriously. The QCU appreciates that government recognises the severity and consequences of non-compliance with the Superannuation Guarantee. It would be difficult to entirely ignore a failure to pay \$5.6 Billion to 2.76 million employees<sup>1</sup>. The QCU however, supports the submission of the ACTU that this Bill does not go any way near far enough to tackle the extent of the problem.

It is incongruous that this industrial entitlement is treated differently to other industrial entitlements, particularly considering its significance. Not only does superannuation provide for the retirement income of Australian workers, it also has provided Australia with significant levels of savings and in turn investment capital. Moreover, the smaller the balance of superannuation accounts, the greater will be the reliance on aged pensions and in turn the burden to the taxpayer.<sup>2</sup>

It is important to consider occupational superannuation in its historical context. Superannuation was a condition that was fought for and obtained by Australian workers, initially through collective bargaining and then through the award system. Previous attempts to introduce superannuation as a pension had failed, primarily because a pension was paid after the conclusion of the employment relationship and therefore not within the definition of "industrial matter"<sup>3</sup>. By making the contribution to a superannuation fund an "industrial matter" the previous constitutional problems associated with the narrow definition of industrial matter were overcome<sup>4</sup>.

Award coverage of occupational superannuation was limited to a three percent contribution and obviously only covered employees whose employment was covered by an award. The Superannuation Guarantee was introduced to increase the level of contribution and to provide a broader constitutional basis upon which the Australian Government could rely. The Australian Government relied upon its

---

<sup>1</sup> Senate Economics References Committee Superbad – *Wage theft and non-compliance of the Superannuation Guarantee* May 2017

<sup>2</sup> Anderson, H and T Hardy Who Should be the Super Police? *UNSW Law Journal* 37 (1)

<sup>3</sup> R v Hamilton Knight; Ex parte Commonwealth Steamship Owners Association [1952] HCA 38; (1952) 86 CLR 283 (31 July 1952)

<sup>4</sup> Re Manufacturing Grocers' Employees Federation of Australia; Ex parte Australian Chamber of Manufacturers ("Superannuation case") [1986] HCA 23; (1986) 160 CLR 341 (15 May 1986)

taxation power to introduce the guarantee intended to compel employers to make contributions into a compliant fund<sup>5</sup>.

Following the use of the corporations power by the Howard Government to introduce the WorkChoices legislation, and its subsequent withstanding of a High Court Challenge<sup>6</sup>, it would appear that there is no longer a necessity for the Commonwealth to rely upon the taxation power. By the use of the corporations power, the Howard Government had overcome the previously vexing question of how to regulate private sector industrial relations<sup>7</sup>.

By making superannuation contributions the same as any other entitlement, such as wages, allowance and various forms of leave, it would overcome some of the compliance issues currently associated with superannuation<sup>8</sup>. Making superannuation contributions the same as other employment conditions would enable workers and their representatives to undertake enforcement activities that are currently limited to the Australian Taxation Office and Fair Work Ombudsman. This includes the detection of non-compliance in the first instance, which remains one of the biggest issues<sup>9</sup>, as well as proclivity to prosecute for non-compliance, for which commonwealth agencies seem reluctant or unable. These agencies have suffered the same cuts to funding as other commonwealth agencies in recent years and would be incapable of undertaking the level of work required to turn around an apparent culture of non-compliance in a substantial portion of Australian employers<sup>10</sup>.

Some of the measures being considered in the Bill may well be of some assistance but on their own they will achieve very little towards correcting what is a mammoth issue of non-compliance. In our submission, the burden of ensuring compliance with superannuation needs to be shared with individual workers and in particular their representatives. Otherwise under-resourced commonwealth agencies will continue to struggle with this load.

What is also not apparent in the Bill is any consideration of how superannuation contributions are collected and remitted. A range of recommendations made by the Senate Economics References Committee in 2017<sup>11</sup> are worthy of adoption. The threshold for superannuation was introduced for fear that small contributions made on behalf of low income earners would place an administrative drain on superannuation funds. With \$2,324.4 Billion in superannuation assets as at 30 June 2017, it is probable that funds will be able to withstand this administrative burden.

---

<sup>5</sup> Stewart, A *Stewart's Guide to Employment Law 6<sup>th</sup> edition* The Federation Press Sydney 2018

<sup>6</sup> Stewart, A and G Williams (2007) *Work Choices What the High Court Said* Federation Press Sydney 2007

<sup>7</sup> Lyons, M. and T Khoshaba "Pragmatism, Principles and Policy: Federalism and Industrial Relations Regulation in Australia" *Journal of Industrial Relations* Vol 51 (2)

<sup>8</sup> Op cit Anderson and Hardy

<sup>9</sup> Ib id

<sup>10</sup> Khadem, N and Noel Towell Tax cheats to win from ATO cuts, insiders say Sydney Morning Herald 16 January 2015

<sup>11</sup> Op cit Senate Economics References Committee