



Senate Standing Committees on Economics
Parliament House
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Treasury Laws Amendment (2018 Measures No. 4) Bill 2018

Cbus broadly welcomes the measures included in the Bill and the opportunity to provide some comments.

Cbus is the leading Australian Industry Super Fund for all those working in the building, construction and allied industries. Maximising the retirement outcomes of our 765,000 members is at the heart of everything we do.

Our successful member-first approach is guided by our key sponsoring organisations - the unions and employer organisation of the building and construction industry.

We offer great service to over 131,000 employers, providing confidence that their employees are with a top performing fund, which continues to grow.

Our members' retirement savings join a \$43 billion pool that gives them access to large scale, long-term, diverse and innovative investments, reflected in the fact that Cbus has been a top performing fund over short, medium and longer time periods.

We invest responsibly to maximise long-term value for members and the society in which they work and retire. Cbus invests in developing the built environment. We are a leader in direct investment in property, creating a virtuous circle where part of our members' retirement savings is invested into their industry, creating over 75,000 jobs today and a better retirement tomorrow. Cbus is proud to have delivered an average of 9.24% per year to our members over the past 33 years.

The Problem of Unpaid Super

We welcome the heightened awareness around the issue of unpaid super and Cbus is broadly supportive of the measures in the Bill; however, they are essentially small steps towards fixing a large problem.

Unpaid superannuation is a serious issue which significantly undermines the integrity of the super system and erodes the level of adequacy of retirement income for many Australians. Cbus, along with other organisations, including the Inspector-General of Taxation and the Australian National Audit Office, have been highlighting the issue for many years.

A series of Cbus research papers have documented the disturbingly high level of non-compliance with superannuation guarantee obligations over recent years.¹ The joint report published by Cbus and Industry Super Australia in December 2016 estimated that the annual size of non-compliance is between \$3.6 billion and \$5.6 billion.² This equates to \$1,489 or almost four months of super for the average worker affected.

In response to the Cbus-ISA report, and growing concerns about unpaid super, the ATO estimated the gap in superannuation compliance to be \$2.85 billion.³ Regardless of how the level of the problem is calculated there is a staggering amount of unpaid superannuation that creates;

1. A delayed and detrimental impact on individuals' retirement savings, depriving them of the benefits of investment earnings and compound interest;
2. The creation of an unfair and unlawful competitive advantage against employers who are obeying the law and doing the right thing by their employees;
3. An immediate and negative effect on the collection of government revenue through lost taxation; eg 15% of \$3.6 billion is \$540 million.
4. Greater reliance on the age pension and other government services which results in higher future expenditure by governments; and
5. An undermining of the broader social and economic benefits of a compulsory retirement savings system.

Unpaid super = Unpaid wages

Non-payment of superannuation guarantee is essentially non-payment of wages and should be treated with the same degree of seriousness. In this regard we welcome the introduction of criminal penalties for some employers who fail to pay SG following an ATO direction.

However, super payments under the SG Act are only required on a quarterly basis which creates a significant risk of non-compliance. The quarterly cycle means that detection of non-payment can be significantly delayed which can reduce the likelihood of recovery.

Cbus continues to advocate that SG contributions should be paid congruently with the payment of wages. This would provide an important compliance framework for SG and ensure non-payment becomes visible in a far timelier manner. This measure could help to expose both non-payment and underpayment of superannuation to employees.

¹ <https://www.cbussuper.com.au/about-us/news/media-release/new-research-shows-44-billion-could-be-lost-to-retirement-savings-in-next-10-years-through-non-compliance-with-superannuation-laws>

² *Overdue: Time for Action on Unpaid Super* – Industry Super Australia & Cbus 2016 -

<https://www.cbussuper.com.au/about-us/news/media-release/one-third-australians-short-changed-on-super>

³ ATO, August <https://www.ato.gov.au/Media-centre/Media-releases/ATO-releases-Super-Guarantee-gap-estimate/> The figure of \$2.85 billion was an extremely conservative figure discounted for the amount the ATO claimed to have recovered and failing to take into account the cash economy impact and the discounting of SG payments through supplementation of salary sacrifice amounts.

Rice Warner Research

Cbus has commissioned research⁴ that models changing the frequency of SG payments from quarterly to fortnightly. This research is attached as **Appendix A** and shows a wide range of potential benefits from this change.

The research found that:

- increased compounding of investment returns on SG payments from quarterly to fortnightly (assuming the member is paid fortnightly) will result in an increase in industry assets of \$2.9 billion by 2057;⁵
- better compliance for members who might have missed an SG payment under the current quarterly system where they change jobs, could result in an increase of \$7.8 billion in total funds under management by 2057; and
- increased compliance with SG payments because of easier oversight by the member and the ATO with no lag between earning SG and payment to the fund could result in an estimated \$47.3 billion increase in total industry funds under management by 2057.

The combination of all of these scenarios is an estimated \$58.0 billion increase in total industry funds under management by 2057.

On an individual basis the increase in retirement income could be up to \$30,000 for an individual earning \$60,000 p.a.

This independent research adds to the compelling case for aligning the payment of SG and wages and we note that it was a specific recommendation of this Committee in *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*.⁶

Cbus endorses all 32 recommendations from *Superbad* and believe it provides a comprehensive roadmap to address SG non-compliance. We specifically note and highlight the following recommendations from the report with a view that, where appropriate, the Bill be amended to adopt the recommendations.

Recommendation 5

The committee recommends that the government strongly consider introducing amendments to the SGA Act to require SG to be paid at least monthly, and preferably in alignment with regular pay cycles.

Recommendation 13

The committee recommends that the government review ATO resource levels to ensure that the agency is well-equipped to undertake effective and comprehensive compliance activities to combat SG non-payment.

Recommendation 14

The committee recommends that the government consider a legislated option for employees, or third parties acting on their behalf, such as unions or

⁴ *Superannuation Guarantee Policy Modelling – Rice Warner – 2018* (Commissioned by Cbus).

⁵ This is based on a conservative estimate of investment earnings.

⁶ http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/SuperannuationGuarantee/Report/b01

superannuation funds, to take private legal action in the relevant courts against their employers for unpaid SG.

Recommendation 15

The committee recommends that superannuation funds seeking default status in industry awards be required to have a rigorous arrears collection process in place.

Recommendation 18

The committee recommends that the government consider increasing the resource levels of the Fair Work Ombudsman to ensure it is properly equipped to carry out any additional SG compliance or recovery activities it may acquire from the ATO.

Our brief comments in relation to the measures in the Bill appear below.

Chapter 1 – Directions and penalties

The Bill would allow the ATO to issue directions to pay unpaid super and/or undertake SG education courses. Cbus welcomes these measures and notes that a lack of knowledge is sometimes a factor in cases of SG non-compliance.

In addition, the introduction of potential criminal penalties for failing to comply with a direction to pay will send a strong signal to employers regarding the seriousness of SG non-compliance.

Obviously, the effectiveness of these measures will also depend on how the ATO uses the new powers and tools for its compliance and enforcement activities and the level of resources made available to it to successfully deploy them.

As proposed in *Superbad* Recommendations 13 & 18, Cbus would support the ATO being reinforced by agencies such as the FWO to ensure SG compliance. We recommend that the Bill be amended accordingly.

Chapter 2 – Disclosure of information about non-compliance

The proposal to allow the ATO to disclose SG non-compliance to affected employees appears reasonable and appropriate. Payslips generally show superannuation amounts which (understandably) give workers the impression that ‘the money is in the fund’; however, this is not always the case and employees are often not aware of the non-payment of SG.⁷

Chapter 3 – Single Touch Payroll

Extending Single Touch Payroll to all employers from 1 July 2019 is welcome and has been supported by Cbus in previous submissions. It is Cbus’ experience that the bulk of non-compliance with SG occurs in smaller businesses. Extending STP to these

⁷ Helen Anderson and Tess Hardy, ‘Who Should be the Super Police? Detection and Recovery of Unremitted Superannuation’ (2014) 37 UNSW Law Journal 162 – page 168.

smaller employers will provide valuable information to help improve compliance across this segment.

It is also Cbus' experience that some employers choose to only pay superannuation for sections of their workforce and not for all employees in order to avoid their full obligations while not triggering 'arrears' detection and remediation activities at the fund level. Congruent payment of wages and superannuation facilitated by single touch payroll would deter such efforts at gaming the system.

Chapter 4 – Fund reporting

The move to facilitate more regular reporting by superannuation funds is supported and would be greeted as a business process that is moving towards meeting members' best interest by Cbus, despite the potential extra administrative requirement.

However, caution would still be required in matching fund data against STP data because of the continued disparity in payment (wages and superannuation) timings. It is presumed that such data would not be called for by the ATO until post the payment timings prescribed in the SG Act – ie. FY Quarter + 28 days.

Issues associated with possible delays in clearing house payments and other administrative errors may require two or three quarters of data matching to achieve a correct picture of payment regularity, avoidance or discrepancy.

As has been discussed elsewhere, delays in detection of non-compliance amplify the difficulty or blunt the success of recovery processes. A six or nine-month delay in determining whether an employer is compliant is simply too great a time period.

Given the advancements in technology supporting payment transfers and the advantages to business of managing cash flow more correctly, Cbus submits that the most efficient and effective measure to better data matching and ensuring compliance with SG is to amend the Act to ensure real time payment aligning the payment and reporting of superannuation with wages. Payment receipts could be readily generated from superfunds to both employers and the ATO.

Cbus stands ready to do their part in assisting with more frequent data provision under the proposed amendments and believe the alignment solution through STP would create far greater transparency and ease of detection in real or much tighter timeframes, improving compliance and recovery.

Chapter 5 – Compliance measures

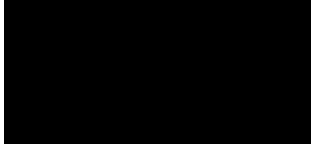
Cbus has previously advocated for greater compliance measures and tools to improve the operation of the ATO's SG activities.⁸ We especially welcome the closing of the loophole regarding Director Penalty Notices which gave directors 21 days to wind up a company before they were liable for unpaid super and wages.

⁸ Cbus submission to the Senate Standing Committee on Economics Superannuation Guarantee non-payment – March 2017

We also welcome measures for employers to report salary sacrifice amounts for each individual employee to assist in facilitating the closing of loopholes that allow employers to discount SG obligations.

Please do not hesitate to contact Rod Masson on [REDACTED] if you have any queries in relation to our submission.

Yours sincerely,



Robbie Campo
Group Executive
Brand, Advocacy, Marketing & Product

25 May 2018