



3 October 2019

Committee Secretariat
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600
Email: economics.sen@aph.gov.au

Dear Secretary,

Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019

In brief:

AIST supports measures to ensure employer superannuation compliance but argues that an amnesty would weaken other existing and proposed compliance measures. Evidence shows that amnesties harm compliance culture. An amnesty was not recommended by the Government's own inquiry into unpaid super. AIST recommends that the Bill not be proceeded with.

The Australian Institute of Superannuation Trustees (AIST) thanks the Committee for the opportunity to make a submission on the Bill.

AIST supports measures to improve the compliance of employers in fulfilling their obligations to make Superannuation Guarantee (SG) payments for their employees. However, we do not support the establishment of a SG amnesty as such a measure and have consistently opposed amnesty proposals for at least four years.

AIST has been involved in governmental discussions about the possibility of an SG amnesty since 2015, and we are aware of approaches to the Government at that time proposing an amnesty. Back then, AIST expressed the view that an SG amnesty would be neither well-targeted nor effective. We expressed the view that the ATO needed better data, tools, law and focus on recovering unpaid super. Since then, as we identify in this submission, the ATO and the Government have made much progress in each of these areas

Evidence shows an amnesty would not be an effective compliance tool. It would distract from, and weaken, numerous initiatives already in place to improve SG compliance. Our submission identifies many of these initiatives

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Fundamentally, superannuation theft should be punished not rewarded, and Government support should be provided to the majority of employers that want to meet their superannuation obligations and be good corporate citizens.

The government inquiry into unpaid super didn't recommend an amnesty

There was no recorded consideration of, nor recommendation for, an amnesty in the Superannuation Guarantee Cross-Agency Working Group's 31 March 2017 report to the Minister for Revenue and Financial Services¹.

The working group was chaired by the ATO, the agency with responsibility for enforcement of SG non-compliance.

The working group identified a time lag of up to 14 months in employer reporting of SG payments, and the perception and reality of an enforcement regime that was not always effective and could be improved.

The working group identified two key proposals to improve SG compliance that have since been implemented by Government and the ATO:

1. For employers to report SG payments to the ATO in a timely manner.
 - a. Single Touch Payroll (STP) now requires near-real time reporting by all employers.
2. For super funds to report superannuation information to the ATO in a timely manner.
 - a. Event-based reporting (MATS/MAAS) now requires near real-time reporting by APRA-regulated super funds.

The working group made a range of other recommendations and identified agency actions to address SG compliance. These anticipated the ATO taking a more pro-active approach to SG compliance and are now either in place or development.

While the working group recommended an enforcement regime able to reflect different levels of employer behaviour and culpability, it did not recommend any form of amnesty nor general relief from prosecution.

¹ <https://treasury.gov.au/publication/superannuation-guarantee-non-compliance>

New SG compliance measures will catch SG cheats but support employers wanting to comply

With the exception of some 'closely-held' businesses, STP reporting has been mandatory for all employers since 30 September 2019. Amongst other things, the ATO will be able to identify trends in levels of employer tax and SG payments that will help them identify historic and current non-compliance and act to recover unpaid SG.

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Event-based reporting by super funds coupled with STP data support a more targeted, timely and proactive compliance program by the ATO. The ATO are also developing analytical models to take advantage of the new data that will become available to them and provide a more complete picture of employers at the individual, industry and market level.

Better identification of the 'at risk population' allow the ATO to focus education and assistance programs. We are advised by the ATO that they are directly engaging with employers earlier using 'nudge' strategies to push at risk employers toward willing engagement. This means ATO-initiated compliance activity will increase over time as the number of complaint-driven cases decrease.

In terms of preventative strategies, the ATO undertakes a range of activities to educate employers including mainstream and social media, targeted campaigns with high risk industries and the provision of products to assist employers, such as online tools and calculators.

The ATO has also announced preventative strategies including targeted messaging to employers and employees, improved tools for both employers and employees and working with employers on underlying issues such as cash flow management.

The ATO has published details of '*Our compliance approach*'² to highlight the differentiated treatments they apply according to the employer behaviour they observe. They have refined their approach to dealing with potential non-compliance by expanding their low touch treatment for those employers displaying a willingness to comply.

The combination of comprehensive reporting, better data, alignment of superannuation, payroll and tax data, and the ATO's approaches to non-compliance is likely to significantly reduce non-compliance levels, including historic cases of non-compliance.

This is a sensible, considered approach that is proactive, educative and effective. It sends a positive message to employers and the community and will be welcomed by the majority of employers that are good corporate citizens.

² <https://www.ato.gov.au/Business/Super-for-employers/Paying-super-contributions/Missed-and-late-payments/Our-compliance-approach/>

In contrast, an amnesty sends a message to employers breaking the law that they will be protected from the consequences of the law, and undermines the support provided by the ATO to employers wanting to fully comply with their legal obligations.

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In addition to these measures that are in train, there are other initiatives the Government should implement rather than the amnesty. These include the removal of the \$450 pm SG threshold (so that employers cannot game the payment of superannuation); requiring SG payments to be made at the same time as wage payments (so that employees have better visibility of their superannuation payments); and extending the Fair Entitlements Guarantee to SG payments.

It's been proven amnesties don't generally work

There is also a wealth of academic literature on the efficacy of tax amnesties on employers and individuals. Overwhelmingly, the literature does not conclude that amnesties are efficient mechanisms to improve compliance. These findings are directly referable to an SG amnesty for employers.

Criminology literature shows that offenders become increasingly scared of detection and fines when the time of detection and punishment approaches. Offenders behave differently when they decide to offend (eg, by not paying super entitlements to their employees) compared with when they have to face the consequences of their actions (eg, when the ATO identifies their non-compliance). Potential offenders can calculate the benefits of initial non-compliance against the risk of prosecution and may decide to offend if they believe they may be able to avoid prosecution (eg, as a result of an amnesty). This literature is summarised by Bayer, Oberhofer and Winner in their paper on "The Occurrence of Tax Amnesties: Theory and Evidence."³

Calculated behaviour, based on a previous perception of a low chance of detection and the prospect of an amnesty where bad behaviour may be forgiven, should not be rewarded. As mentioned earlier, there has been discussion about the possibility of a SG amnesty for some years.

Bayer, Oberhofer and Winner concluded⁴:

Policymakers often view tax amnesties as an efficient policy device to exploit additional revenue sources (at least in the short run) and, in the middle to long run, to improve tax compliance. However, empirical and anecdotal evidence shows that the benefits of tax amnesties are only modest

³ Bayer R, Oberhofer H and Winner H, *The Occurrence of Tax Amnesties: Theory and Evidence*, Working Papers in Economics and Finance, No. 2014-06, pp.1-2. Available at <http://hdl.handle.net/10419/122167>

⁴Bayer R, Oberhofer H and Winner H , pp.31-32.

and in many cases do not exceed the costs of such programs (see, e.g., Baer and Le Borgne 2008). Our theoretical model and the corresponding empirical findings provide one possible explanation for this observation, suggesting that amnesties are self-fulfilling in the sense that initial compliance gets worse if taxpayers expect that an amnesty will be coming along soon. In other words, anything that increases the believed probability of a tax amnesty reduces initial revenues and in turn reinforces the government's need to enact an amnesty. Consequently, governments should think twice before calling an amnesty as a quick fix for a budgetary shortfall, as it might increase the pressure on future budgets, since taxpayers then anticipate future amnesties. Hence, it might be worth introducing commitment devices such as legislation that allows governments to credibly commit not to enact amnesties, which would improve tax compliance and prevent self-fulfilling beliefs from forcing governments to use amnesties regardless if they like them or not.

An amnesty may also have the effect of undermining the integrity of tax systems, and in this case, the superannuation system. For example, amnesties may reduce the compliance of hitherto honest employers.

Alm and Martinez-Vazquez summarised this point⁵:

Tax amnesties are a controversial revenue-raising tool. Advocates of amnesties emphasize the immediate and short-run revenue impact, as individuals take advantage of the grace period to pay unpaid taxes. Advocates also argue that future tax compliance (and therefore future tax revenues) may increase if the amnesty induces individuals not on the tax rolls to participate, and if the amnesty is accompanied by more extensive taxpayer services, better education on taxpayer responsibilities, and, especially, stricter post-amnesty penalties for evaders and greater expenditures for enforcement. Critics contend that the actual experiences of many countries indicate that the immediate impact on revenues is almost always quite small. They also question the long-run impact of a tax amnesty. If honest taxpayers resent the special treatment of tax evaders, then their compliance may decline. Further, if individuals come to believe that the amnesty is not a one-time opportunity, then they may reduce their current compliance in anticipation of another, future amnesty.

An amnesty may also send the message that a government is not committed to enforcing a tax (or superannuation collection). In Australia, there is widespread public support for employers to pay the superannuation entitlements of their employees, and opposition to wage theft by employers.

⁵ Martinez-Vazquez, Jorge, and James Alm. 2003. *Institutions, Paradigms, and Tax Evasion in Developing and Transition Countries*. In *Public finance in developing and transitional countries : essays in honor of Richard Bird*, edited by Richard M. Martinez-Vazquez Jorge Alm James Bird, P.165. Available at https://scholarworks.gsu.edu/cgi/viewcontent.cgi?article=1041&context=econ_facpub

While the Government supports these views of the public, attempts to introduce an amnesty confuses this message.

Alm and Martinez-Vazquez also summarised the impact of amnesties on social norms⁶:

A tax amnesty gives individuals an opportunity to pay previously unpaid back-taxes without being subject to the penalties that the discovery of evasion normally brings. Such amnesties may reduce compliance if honest taxpayers resent the tax forgiveness given to tax cheats (and if individuals believe that the amnesty may be repeated again).

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For all of these reasons, AIST calls on the Committee to recommend that the Bill not be proceeded with.

For further information regarding our submission, please contact AIST Senior Policy Manager David Haynes at [REDACTED]

Yours sincerely,

Eva Scheerlinck
Chief Executive Officer

The Australian Institute of Superannuation Trustees is a national not-for-profit organisation whose membership consists of the trustee directors and staff of industry, corporate and public-sector funds.

As the principal advocate and peak representative body for the \$1.4 trillion profit-to-members superannuation sector, AIST plays a key role in policy development and is a leading provider of research.

AIST provides professional training and support for trustees and fund staff to help them meet the challenges of managing superannuation funds and advancing the interests of their fund members. Each year, AIST hosts the Conference of Major Superannuation Funds (CMSF), in addition to numerous other industry conferences and events.

⁶ Martinez-Vazquez, J, and Alm J. p.151.