



25 May 2018

Mr Mark Fitt
Secretary
Senate Standing Committees on Economics
PO Box 6100
Parliament House
Canberra ACT 2600

Email: economics.sen@aph.gov.au

Dear Mr Fitt,

Re: Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 [Provisions]

In brief:

AIST supports the measures in this Bill, however we consider that limiting the discussion on unpaid super to the Superannuation Guarantee and employees has several disadvantages. AIST has proposed a series of enhancements which could further improve the Bill.

AIST wishes to thank the Committee for the opportunity to comment on this Bill.

AIST does not plan to respond in detail to all the measures contained in this Bill, however, we generally support the measures contained in this Bill. The problems associated with unpaid superannuation are a priority of AIST's. We have dedicated larger amounts of AIST's resources towards measures aimed at curbing underpayment of superannuation entitlements in recent times, and applaud the measures contained in this Bill.

We note that, as found in the *'Superbad – Wage theft and non-compliance of the Superannuation Guarantee'* report negative impacts of non-payment of SG have been noted:¹

- Economic impacts on the member, including a loss of retirement income and the benefits of compounding interest.
- Competitive advantages to businesses that choose not to pay superannuation and therefore increase the amount of money available to spend on other business operations or to increase profits.

¹ Economics References Committee (2017). *Superbad - Wage Theft and Non-compliance of the Superannuation Guarantee*. [online] pp.25-28. Available at: <https://tinyurl.com/y9bw4zlo> [Accessed 12 Feb. 2018].

- A greater burden on government services such as the Age Pension, which results in increased government expenditure.

The measures contained in this Bill will go a long way to solving the problems associated with the underpayment of superannuation by employers, however, at a high level, there are still a substantial number of issues that cannot be dealt with as part of this Bill which require attention, including the issues that non-SG contributions are difficult to enforce, or the many issues related to Australians who are not considered employees.

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AIST believes that this Bill's ostensible aims of curbing unpaid superannuation could be enhanced with the addition of the following measures:

- Investigating the introduction of real-time payment and reporting of SG to promote compliance;
- Enabling superannuation fund trustees to identify and collect unpaid SG from employers on behalf of fund members;
- Ensuring that any fund seeking default status in Enterprise Bargaining Agreements or modern awards has an effective employer arrears collection process in place;
- Requiring the ATO to measure and report on the extent of unpaid superannuation;
- Adequately resourcing the ATO to recover unpaid SG;
- Enabling employees, either directly or through federal entities, to recover unpaid SG;
- Exploring the introduction of mechanisms to reduce sham contracting;
- Exploring extending the payment of SG to ensure that 'dependent contractors' receive superannuation; and
- Removing the \$450 monthly income threshold for employer SG payments.

Whilst we applaud the Government's commitment to resolving unpaid superannuation, as well as other legislation which seeks to remove loopholes related to salary sacrifice contributions, there continues to be more work that is needed in regard to this issue.

Directions and penalties in relation to superannuation guarantee charge

The measures in the Bill provides the Commissioner of Taxation with directions powers to order employers to pay an outstanding (or estimated) SG liability, as well as ordering an employer to undertake an approved course in the event of failure to pay outstanding superannuation liabilities.

AIST supports these measures, noting that the measure has been expanded to ensure that individuals involved in the decision-making of the business may be directed to undertake an approved course in addition to individual employers.

AIST, as a Registered Training Organisation (RTO) continues to raise concerns about the potential use of education as a punishment option and point out that this is not appropriate.

Disclosure of information about non-compliance

We support the ATO being given the power to disclose information about an employer's non-compliance with the law to other employees for whom SG obligations have not been met. Employees need to know that their employer has not paid SG on their behalf so that they can act and protect their retirement futures.

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Identifying non-compliance is an important first step, however employees themselves should not be expected to recover unpaid SG. Instead, the ATO should be required to take pro-active action to recover unpaid SG on behalf of employees where it identifies non-compliance.

If members were simply advised by the ATO of their employer's non-compliance and were then required to make a complaint to the ATO to recover the superannuation, this would be unsatisfactory.

Single touch payroll reporting

AIST supports the proposal to extend Single Touch Payroll (STP) to all employers. The extension of the reporting framework will enable the ATO to detect non-compliance with SG earlier and better protect employees.

We welcome the compulsory reporting of salary sacrificed amounts as this will provide the ATO with greater visibility of employers that are counting salary sacrificed amounts towards SG. While increased visibility is welcomed, it is important that the loopholes that allow employers to use salary sacrificed amounts to reduce their mandated SG obligations are closed. The *Treasury Laws Amendment (Improving Accountability and Member Outcomes in Superannuation Measures No. 2) Bill 2017* contains mechanisms to close these loopholes, however it remains before the Senate.

If the salary sacrifice loopholes are not closed then some of the measures outlined in this package, such as the enhanced STP reporting measure, may not have its desired impact. The greater visibility, in conjunction with the closure of the loophole, will place the ATO in a better position to act against employers that do not comply with their obligations under the law.

Further, the strengthening of reporting obligations must be supported by the ATO prioritising investigation and enforcement activities. To perform these functions, the ATO requires adequate resourcing because acting against individual employers through avenues such as directions, fines, or imprisonment is resource intensive.

Fund reporting

AIST supports the measures which will see the ATO given powers to allow corrections to statements made under events-based reporting within a suitable grace period. Regular reporting is essential for visibility and compliance, however due to the inflated risk of errors, it is only appropriate that there be the ability to correct such errors.

Removing the requirement for funds to lodge lost member statements twice a year with the ATO is also welcomed because it harmonises reporting obligations under the law. However, we believe that it is critical for the ATO to undertake a reunification workstream whereby they attempt to reunite members with ATO-held super monies.

Compliance measures

AIST strongly supports the enhanced director penalty regime outlined in the exposure draft bill and welcome the proposed lock down rule for director penalties as this prevents directors from liquidating a company to avoid various superannuation obligations.

Amendments relating to employee commencement

The proposed amendments will allow the ATO to provide information relevant to a new employer's tax information if the employee consents, including tax withholding information as well as details of an employee's existing superannuation accounts. This is designed to make commencement processes at a new employer simpler for both employees and employers.

AIST supports this proposal. However, we would prefer that more information regarding employee consent mechanisms and controls had been provided in the explanatory memorandum to the Bill. We urge the Committee to recommend that the ATO be expressly tasked with developing guidance to outline how the consent framework operates in practice.

For further information regarding our submission, please contact Richard Webb, Policy & Regulatory Analyst at [REDACTED] or at [REDACTED].

Yours sincerely,

[REDACTED]

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 \$1.2 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.