



23 May 2018

Committee Secretariat  
The Senate Standing Committees on Economics  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

By email: [economics.sen@aph.gov.au](mailto:economics.sen@aph.gov.au)

Dear Mr Fitt

### **Superannuation guarantee integrity package**

Thank you for the opportunity to comment on the exposure draft of the Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 (“the Bill”).

This submission is being made by the Australian Restructuring Insolvency and Turnaround Association (ARITA). Information about ARITA is at the end of this submission.

ARITA strongly supports the measures in the Bill for two reasons.

Firstly, it is our view that these measures will assist with resolving the issue of employers using unpaid superannuation as an easy source of funding which arises because of the current lack of transparency around outstanding superannuation obligations.

Secondly, improved reporting will also assist insolvency practitioners and the Australian Taxation Office (ATO) in quantifying the amount of outstanding superannuation, and each employee’s entitlement to superannuation, in the event of a formal insolvency appointment.

#### **1. Lender of last resort**

Self-reportable amounts payable to the ATO can become an easy source of ‘funding’ when a business enters into some form of financial distress. By failing to report, the obligation or debt can become hidden and there is a perception that the outstanding amount will remain unidentified until such time as business improves and the amount can be paid. It is often the case that business does not improve and amounts continue to accrue and remain unpaid, and often unreported.



Although the intent is that Superannuation Guarantee (SG) be paid to an employee's superannuation fund, the lack of transparency and accountability around these payments means for a large number of employers, particularly those in financial distress, those obligations convert to a Superannuation Guarantee Charge (SGC). As an amount reportable and payable to the ATO, they suffer from the same problem highlighted above.

It must also be noted that we are aware that some companies are established with an intent not to meet any tax and SG obligations and to eventually phoenix the business into a new corporate form to avoid these obligations entirely.

A failure to strongly enforce payment of SG and other tax obligations encourages businesses to not comply with their responsibilities as they struggle to compete against non-complying businesses.

The expansion of Single Touch Payroll reporting to all employers, improvements to reporting of superannuation contributions by Superannuation Funds, improved disclosure to employees of their employer's non-compliance and increased penalties and enforcement where obligations are not met, will all aid in improving transparency and accountability for employees' superannuation entitlements.

## **2. Difficulty determining the claim in an insolvency**

We receive feedback from our members that the ATO can experience difficulties in determining the amount of the claim for SGC, and this claim can regularly be amended during the conduct of the administration. It would be reasonable to assume that this difficulty is associated with the current lack of reporting around superannuation obligations.

Insolvency practitioners are often appointed to businesses with inadequate books and records. This means they may not be able to easily complete SGC statements in order to provide the required information to the ATO.

Improved reporting and timely identification of failures to report may assist with this.

Should you wish to discuss any aspect of this submission, please do not hesitate to contact Ms Kim Arnold, ARITA's Policy & Education Director, on 0 [REDACTED]

Yours sincerely

[REDACTED]  
**John Winter**  
Chief Executive Officer



## About ARITA

The Australian Restructuring Insolvency and Turnaround Association (ARITA) represents practitioners and other associated professionals who specialise in the fields of insolvency, restructuring and turnaround.

We have more than 2,000 members including accountants, lawyers, bankers, credit managers, academics and other professionals with an interest in insolvency and restructuring.

Some 84 percent of registered liquidators and 89 percent of registered trustees are ARITA members.

ARITA's mission is to support insolvency and recovery professionals in their quest to restore the economic value of underperforming businesses and to assist financially challenged individuals.

We deliver this through the provision of innovative training and education, upholding world class ethical and professional standards, partnering with government and promoting the ideals of the profession to the public at large.

The Association promotes best practice and provides a forum for debate on key issues facing the profession. We also engage in thought leadership and advocacy underpinned by our members' knowledge and experience.