SUBMISSION 2

Australian Institute of Superannuation Trustees

31 May 2012

The Committee Secretary
House Standing Committee on Economics
PO Box 6021
Parliament House
CANBERRA ACT 2600

Email: economics.reps@aph.gov.au

RE: Bills referred on 24 May 2012

Dear Sir/Madam,

The Australian Institute of Superannuation Trustees (AIST) is an independent, not-for-profit professional body whose mission is to protect the interests of Australia's $450 billion not-for-profit superannuation sector. AIST's members are the trustee directors and staff of industry, corporate and public-sector superannuation funds, who manage the superannuation accounts of two-thirds of the Australian workforce.

Our submission relates specifically to the *Tax Laws Amendment (2012 Measures No. 1) Bill 2012* ("the Bill") and only the parts of the Bill that relate to companies' non-compliance with superannuation guarantee (SG) obligations. AIST is not commenting on any of the other bills that have been referred in this package, nor on any remaining provisions contained within the Bill.

AIST made a submission on this bill in its previous forms as exposure drafts in July 2011 (available here: http://tinyurl.com/7pwztym) and in May 2012 (available here: http://tinyurl.com/7qbarod). AIST supports all measures that prevent operators of phoenix companies diverting superannuation entitlements away from their ultimate beneficiaries.

In our original submission, we drew attention to the fact that employees' packages can include mandated payments to superannuation over and above superannuation guarantee minimums. Quite often, these amounts will be in lieu of a corresponding amount of cash salary, which is conceptually identical to a withheld amount. We noticed in the following exposure draft that these provisions were extended to the superannuation guarantee charge more broadly and welcomed this addition to the measures. However, we continue to maintain that mandated over-SG amounts are consistent with the scope of this exposure draft, and propose that the bill be expanded to include these payments.

To illustrate this concept, consider a situation where an award specifies that employees in a certain industry must have 15% superannuation contributions, including the present 9% superannuation guarantee. It is likely that employers and employees in this industry may have agreed to reconfigured packages that proportionately reduce employees' take-home pay to allow for the higher mandated superannuation contributions.

In the above situation, the net effect is that the amount that could be claimed from phoenix company operators would be less for an employee working under this award, relative to a hypothetical employee under a different award subject to ordinary SG superannuation contributions but with all other benefits identical, all other things including total remuneration packages remaining constant.

We urge the Committee to consider the inequity created in these circumstances. **AIST recommends applying the broader set of all mandated employer superannuation contributions to this measure.** We explained in our submission of July 2011 that we believe that this is consistent with the scope of the proposed Bill.

Yours sincerely,

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