



Submission to Senate Economics References Committee
Inquiry into the impact of non-payment of the Superannuation Guarantee

Prepared by Associate Professor Helen Hodgson, Curtin Law School

By authority of the NFAW Social Policy Committee

Submission to Objective of Superannuation

This submission is being made by The National Foundation for Australian Women (NFAW).

NFAW is dedicated to promoting and protecting the interests of Australian women, including intellectual, cultural, political, social, economic, legal, industrial and domestic spheres, and ensuring that the aims and ideals of the women's movement and its collective wisdom are handed on to new generations of women. NFAW is a feminist organisation, independent of party politics and working in partnership with other women's organisations, including the National Women's Alliances Equality Rights Alliance and economic Security 4 Women. These organisations include those committed to increasing support for women in Australia as well as those with a special interest in women's history.

NFAW is concerned about the financial security of women, and the role of superannuation in achieving that security. To that end we have made a number of submissions to previous Parliamentary and Treasury enquiries into the superannuation system and to the Senate Inquiry into the Financial Security of Women in Retirement.

The superannuation guarantee is a key pillar of the retirement system, and for many women it is the primary source of their retirement savings. Women are overrepresented among lower paid, part-time and casual employees. These are among the groups of workers most likely to be affected by the non-payment of the superannuation guarantee.

The consequence of non-payment of superannuation guarantee payments by employers is clear and is reflected in the superannuation balance of the worker. However there are also consequences of late payment of superannuation, including where superannuation that has been withheld but not paid is recovered. The compounding nature of superannuation returns means that late payment in relation to a person in their 20s will be reflected in the balance of their superannuation at retirement.

We would also like to take this opportunity to, once again, ask the Parliament to address the anomaly of the superannuation guarantee exemption for employees earning less than \$450 per month. We have been informed that some employers who maintain large casualised workforces may be exploiting this provision in their rostering arrangements. For example women have talked of being employed by several different employers in the same industry, with each employer limiting the hours so that the worker remains under the monthly threshold. We believe that this also affects other groups of workers, including students. The outcome of this employment practice is that these workers are not accumulating superannuation benefits. However we acknowledge that this cost of superannuation for these workers must be paid either by the worker, through adjustments to their wages – and these workers are often among the lowest paid workers; or by the employer effectively constituting a pay rise for these workers. Accordingly any adjustments must be managed in a way that does not cause undue hardship to either the workers or those employers who are not systematically exploiting this provision.

Our principal concern is that it should not be left to the individual worker to pursue concerns regarding the non-payment of superannuation. In theory the employee will be the first to become aware of a discrepancy, but in practice the employee may not review their superannuation account between official statements; or there may be several employers contributing to a single superannuation account making the non-payment less obvious until the worker scrutinises the detailed statement.

Further complications may arise if the superannuation fund ceases to pay insurance premiums due to the lack of contributions. We are aware of some funds that will transfer members to another scheme after a specified period of non-contribution, and this can affect the level of insurance and other entitlements available to the member.

Therefore we endorse any measures that ensure the early detection of non-payment of the superannuation guarantee.

We are aware of changes within the ATO to facilitate the prompt payment of superannuation guarantee payments. Superstream has now been rolled out to all employers, however as this is a relatively new initiative we are not aware of any data on take up rates and the effect of the change, particularly in relation to small employers.

Superstream addresses the payment processes and addresses delays in the processing of payments. It does not remove the need for compliance action to ensure that payments are being made on behalf of employees.

Currently employers are required to report salary, wages and other payments on their BAS, which can be lodged quarterly or monthly. Superannuation Guarantee payments are required to be paid at least quarterly. It would not be an excessive requirement to require reporting of the amount of superannuation paid in relation to payments disclosed on the BAS.

One of the difficulties in cross-matching this data would be that the global amount paid into superannuation would not necessarily correlate to the Superannuation Guarantee payments required when calculated for each employee, however it would establish an audit trail, and could raise a flag indicating that audit or educational action may be required in respect of that employer.

Similarly, any privacy restrictions that restrict superannuation funds in sharing the information regarding particular members should be reviewed to ensure that the ATO, APRA and ASIC are able to access relevant information to identify employers that are not making appropriate contributions, and to share the information among the regulators as relevant.

Lastly, we are concerned about the prevalence of sham contracting as a pretext to avoid payment of the superannuation guarantee and other costs of employment. In most cases the additional remuneration received by the worker is not sufficient to cover unpaid superannuation guarantee and worker's insurances. We are aware of the efforts being made by regulatory authorities to address sham contracting through better regulation of the ABN system and to ensure that contributions are made in respect of contractors who are

engaged primarily for their labour. However sham contracting continues to be a problem, and continual vigilance is required.

We note that where an employer becomes insolvent there may be some redress available in respect of employee entitlements through the Fair Entitlement Guarantee, however this does not apply to Superannuation Guarantee; which is often the first employee entitlement that is not paid when an employer faces liquidity problems. Accordingly systems need to identify non-payment in sufficient time to limit the loss of superannuation contributions.

Much has been done to improve the collection of the Superannuation Guarantee, however there remain a small proportion of employers that will continue to fail to observe the requirements of the legislation, which will impact on the financial security in retirement for their employees.

The best way to ensure that these employers are identified and the payments are collected is to strengthen the capacity of our regulatory authorities and to remove barriers to sharing information between the superannuation funds and the regulatory authorities to identify defaulting employers early. Leaving the identification of defaults to affected employees is not an adequate response.