



Committee Secretary
Senate Education and Employment Committees
PO Box 6100
Parliament House
Canberra ACT 2600

14 April 2023

By email: eec.sen@aph.gov.au

Dear Committee,

Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023 [Provisions]

I am writing to you as National President of the **Australian Lawyers Alliance (ALA)**. The ALA is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual. The ALA is represented in every state and territory and it is estimated that our 1,500 members represent up to 200,000 people each year in Australia. Our national Special Interest Group for Superannuation and Insurance members **act for claimants of Death, TPD and other default insurances held through workers' superannuation.**

The ALA supports the proposed amendments under the *Protecting Workers Entitlements Bill 2023* ('the Bill'), which will afford workers greater protection of their entitlements and improve fairness in our workplace relations system. In particular, we welcome the protection of workers' superannuation entitlements by including superannuation in the National Employment Standards. These laws will help to end the problem of lost super payments which is currently costing Australians billions a year collectively in wage theft and of which women are particularly vulnerable. This form of default cover is **a crucial safety net for an underinsured or uninsured public who rely on these benefits to support workers and their dependents in the event of premature death or medical retirement.**

To ensure a financially secure retirement, many Australians rely on protection afforded to them under the *Fair Work Act 2009* ('the Act') which we note is not scheduled for independent review, nor does the Act provide any requirement for an employer to pay superannuation to their employees. Therefore, the ALA strongly supports the amendment to ensure workers can recover both superannuation and wages in an underpayment claim under the Act. This amendment will simplify claims of underpayment and streamline the two separate processes between take home pay and superannuation.

Where an employer fails to make super contributions on time, **a worker's insurance can lapse and never commence by reason of the employer's non-payment; leaving them without cover in case of death or disablement.** We have seen this occur time and again, especially since the passage of recent legislation such as the *Parliament of Treasury Laws Amendment (Protecting Your Superannuation Package) Act 2019* (the PYSP) which triggers automatic cancellation of default insurance where the super account becomes inactive or falls below a balance limit.

For this reason, **it is crucial that employees have a remedy against the employer not only for the payment of their contributions but also for damages/compensation for the insurances lost due to the non-payment.** It is pleasing to see some discussion on the issue of 'Orders for Compensation' at paragraphs 99 – 101 of the Explanatory Memorandum¹ to the Bill. However, this discussion does not specifically cover the issue identified above. We therefore strongly encourage the Committee to satisfy itself that such compensation for lost insurances is contemplated and assured in the resultant reforms, whether through section 545 of the FW Act or otherwise.

Otherwise, the Bill is a welcome development for workers who do not have the protection of an award or an enterprise agreement (such as those on the national minimum wage, and employees in certain occupations such as accounting, human resources, marketing, public relations, and information technology specialists). For those without protection of a statutory right to superannuation under the Fair Work Act, enshrining the requirement to pay superannuation in the National Employment Standards ensures that payment of superannuation is a non-negotiable minimum standard. It also guarantees the right to a direct action against employers for super theft and exploitation of vulnerable workers in particular.

¹ https://parlinfo.aph.gov.au/parlInfo/download/legislation/ems/r7010_ems_f9ce8312-4615-4404-8902-af76bb3c8b43/upload_pdf/JC009264.pdf;fileType=application%2Fpdf

Thank you for your attention in this important matter. Please do let me know if I can be of further assistance, in which case please direct correspondence to Nadia Elads, Policy and Advocacy Officer at the Australian Lawyers Alliance,

Yours sincerely,

Genevieve Henderson
National President
Australian Lawyers Alliance