



13 April 2023

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

Dear Committee Secretary,

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

The Financial Services Council (FSC) welcomes the opportunity to make a submission on the Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023. Specifically, its intention to insert the right to superannuation into the National Employment Standards (**the NES**).

The FSC is overall supportive of inserting the right to superannuation into the NES as it will bolster the importance of the system within Australian workplace culture and deter employer non-compliance. In providing an alternative pathway to addressing non-payment of superannuation, the Fair Work Commission (**FWC**) will hold alternative powers than those of the Australian Tax Office (**ATO**) to apply penalties to employers who are doing the wrong thing by their employees.

While inserting the right to superannuation into the NES should provide employees with an alternative pathway to address unpaid superannuation, one that may be more reactive and timelier than that of the ATO, the FSC would like to emphasise the importance of a clear explanation of outcomes for employees so that there is a “no wrong doors” approach to addressing non-payment of superannuation. That is Government will need to make the pathways to the resolution of unpaid superannuation clear to the public to ensure that issues can be easily resolved, and employees can be assured of receiving the same outcome (payment of their owed superannuation) if the matter is pursued either through the ATO or the FWC.

Further, The FSC has an expectation that in inserting a right to superannuation into the NES, any decisions made by the FWC in relation to superannuation payments should have no binding effect on existing legislation nor policy. That is, the FWC should not be able to make determinations that impact matters of public policy, such as the frequency of superannuation payments. We would also seek clarity over the impacts of this measure on stapling fund rules given the recent commitment by the Assistant Treasurer not to amend the stapling regime as a result of the recent Treasury review of the Your Future, Your Super reforms.

If you would like to discuss anything contained in this submission, please do not hesitate to contact me.

Yours sincerely,

Kirsten Samuels  
Policy Manager, Superannuation and Innovation