



# **Inquiry into the Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 [Provisions]**

**Senate Economics Legislation Committee Inquiry**  
**May 2018**

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## Unions NSW

1. Unions NSW is the peak body for trade unions and union members in NSW. It has over 65 affiliated unions and trade and labour councils representing approximately 600,000 workers across NSW.
2. Our union affiliates cover the spectrum of the workforce, stretching from workers in finance to footwear and construction and communications.

## Introduction

3. Superannuation is an issue of vital importance for unions and union members.
4. Unions NSW supports the continued development of a strong superannuation system so working Australians can provide themselves with a retirement income that is sufficient to meet their needs.
5. The proposed amendments contained within the Treasury Laws Amendment (2018 Measures No.4) Bill 2018 (Cth) have aimed to bridge the gap between the existing legislative obligations on employers and superannuation funds and the reality of what occurs.
6. Despite these attempts, there are several areas in which the legislation falls short of addressing the power imbalances and legislative transparency problems for employees. The amendments do little to encourage a worker's faith that the system will support the growth of their superannuation without first prioritising the interests of employers.
7. The superannuation landscape as it currently stands can in many ways be characterised by non-compliance and underpayment. In the 2013-14 financial year, at least 2.4 million workers were underpaid an average amount of \$1500 of their superannuation,<sup>1</sup> despite the obligation of employers to contribute at least 9.5% to the superannuation accounts of every worker earning more than \$450 a month.
8. The situation has since worsened with current research finding that 2.76 million people are affected by underpayment of their superannuation guarantee by an average of \$2,025, or an aggregate amount of \$5.6 billion.<sup>2</sup>

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<sup>1</sup> ISA/CBUS, *Overdue: Time for Action on Unpaid Super* (December 2016) CBUS <<https://www.cbussuper.com.au/content/dam/cbus/files/news/media-releases/Unpaid-Super-Report-Dec-2016.pdf>>.

<sup>2</sup> Industry Super Australia, *Unpaid Super* (2017) ISA <<http://www.industrysuperaustralia.com/campaigns/httpwww-industrysuperaustralia-comassetsuploadsfinal-unpaid-super-january-2017-pdf/>>.

9. This dramatic increase highlights the desperate need for tighter regulation and stricter penalties for non-compliance and more transparency surrounding the process for workers.
10. While many of the amendments will have a positive impact on the compliance rates of employers, there will still be significant gaps left despite these efforts. This submission will aim to address such gaps and discuss how more communication with employees must be mandated. Unions NSW also supports the submissions of the ACTU to this Inquiry.

## **Schedule 1 – Direction powers**

11. The amendments give greater powers to the Commissioner to issue directions to employers to undertake specific actions where the Commissioner is satisfied that there has been a failure on behalf of the employer to comply with their obligation or failure to pay the superannuation guarantee.
12. Presently, the relevant legislation, including the *Taxation Administration Act 1953*, contain no such equivalent provision.
13. While it is a welcome change to see the Commissioner given such disciplinary powers, the amendments still remain void of institutional-employee communication and the language of the text itself leaves plenty of room for the directions to be weakened, or even revoked completely.
14. On paper it appears that the purpose of the directions is to provide the Commissioner with an additional tool to enforce compliance. However, the amendments do not make such directions a compulsory outcome for non-compliant employers.
15. Subdivision 265-C articulates that the Commissioner ‘may’ issue an employer with a written direction requiring them to pay the amount owed. Considering the financial and emotional impact that superannuation theft has on workers, punishment for such actions should be administered as an industry wide standard.
16. The proposed case-by-case framework for the Commissioner to use when deciding on whether to give a direction under 265-90(2) creates too much space for inconsistent outcomes. Taking into regard the size of the business when deciding whether to administer a direction, prioritises the business over the worker. Regardless of whether the business is small or large, a worker has been deprived of their legislative right to the guarantee.

17. There is also no mandated procedure for updating the worker on the process of recovering their stolen superannuation. If transparency is to be a key focus of these amendments, it is imperative that those who are victims of theft are prioritised.

## **Schedule 2 – Disclosure of information about non-compliance**

18. Superannuation theft will continue to be a severe problem for working Australians if issues of transparency and access to information are not addressed effectively.
19. Amendments pertaining to the powers given to a taxation officer regarding disclosing protected information to workers is a positive step towards seeing the abovementioned issues rectified. Once again however, the apparent non-compulsory nature of these powers makes it difficult to ensure that each worker, in each industry will be afforded access to the same information.
20. The disclosure of information that relates directly to a failure or a suspected failure by a worker's employer or former employer should be mandated, not simply 'permitted'.<sup>3</sup>
21. The amendments should also include a clear and enforceable procedure of informing workers who may be, or could still become, victims of their employer's non-compliance.

## **Schedule 3 – Single touch payroll reporting**

22. The introduction of mandatory single touch payroll reporting for all employers would dramatically increase the compliance rates by allowing the Commissioner direct access to the specific information needed to ensure obligations have been met.
23. Under the current legislation, single touch payroll reporting is only mandatory for substantial employers (those with more than 20 employees). This excludes almost the entire small business community as 44% of the small business population work in businesses with less than 2 employees.<sup>4</sup>
24. There is room for concern regarding the logistical administration of the payroll system. If the Bill passes, then it will codify the requirement of all small businesses to have the system by 1 July 2019.<sup>5</sup> No information is currently available as to how this plans to happen and if training is required. While the amendment is a welcome step towards ensuring the superannuation guarantee is complied with, it would be

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<sup>3</sup> Explanatory Memorandum, Treasury Laws Amendment (2018 Measures No.4) Bill 2018, [2.13].

<sup>4</sup> Ibid, [3.39].

<sup>5</sup> Ibid, [3.18].

inequitable to enforce such a law if it was not physically possible for all small businesses to be properly equipped by the deadline.

25. Developing a staggered implementation process would ensure that all businesses nationwide have access to the system and would also allow for more certainty as the process would be more easily monitored if rolled-out incrementally prior to 1 July 2019.
26. Ensuring this process is implemented correctly will help address the ‘failure of the current regulatory regime to achieve its compliance objectives’,<sup>6</sup> and help to ensure that all workers, regardless of the size of their employer, will have equal protection through single touch payroll reporting.

## **Schedule 4 – Fund reporting**

27. Allowing the Commissioner to provide superannuation providers with a grace period for correcting false or misleading statements in relation to member contribution statements without giving rise to penalties runs counter to the intention of these amendments.
28. If the Commissioner is given the power to give directions to employers if they fail to comply, why should these powers not be extended to the funds themselves?
29. If a new industry model is to be designed based on principles of transparency and accountability, then providers should be expected to adhere to the same principles expected of employers. By allowing grace periods, it diminishes the trust that the public has that their interests will be protected by those they have entrusted with their superannuation.

## **Conclusion**

30. Changes to superannuation guarantee compliance regulations are long overdue.
31. The impact that rampant superannuation theft has had on Australian workers has seen millions miss out on their entitlements as well as have to endure indirect, unclear and lengthy Australian Tax Office investigations. These investigations, and the undue pressure they place on the ATO would not be required if the laws designed to protect workers from non-compliance and employer exploitation were aligned with reality.
32. Laws are not doing their job if 2.4 million workers are underpaid an average amount of \$1500.

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<sup>6</sup> Ibid, [3.60].

33. In order for the new amendments to address this systemic problem, more needs to be done to address the scale and scope of superannuation theft. The Senate Economic References Committee report *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*<sup>7</sup> which recommends real action on unpaid super, and would represent a significant first step in addressing the systemic shortfall of superannuation payments.
34. If the Government does not take this issue seriously, then millions of workers will remain unprotected with unpaid super and lost earnings reaching \$66 billion by 2024.<sup>8</sup>

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<sup>7</sup> The Australian Senate Economics Committee, 2017. *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, Canberra: Commonwealth of Australia.

<sup>8</sup> ISA/CBUS, *Overdue: Time for Action on Unpaid Super* (December 2016) CBUS <  
<https://www.cbussuper.com.au/content/dam/cbus/files/news/media-releases/Unpaid-Super-Report-Dec-2016.pdf>>.