

Submission to the Senate
Economics Legislation
Committee — Treasury
Laws Amendment
(Recovering Unpaid
Superannuation) Bill 2019

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Senate Standing Committee on Economics
PO Box 6100
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Canberra ACT 2600

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Via email: economics@aph.gov.au



Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019

Dear Mr Fitt,

A) PERIOD OF AMNESTY

This Bill gives employers temporary relief , and incentive, to rectify non-payment of super guarantee contributions. There is no logical reason put forward as to why the period from March 2018 to the date of Assent could not also be included in the Amnesty.

The concessions offered under this Amnesty should apply in conjunction with, and make allowance for, ‘period of review’ amendment restrictions already enshrined in ATO legislation.

B) ADVERTISING OF AMNESTY

It is logical that a plain English advertising of this Amnesty across various forms of media should ensue from Assent to maximise awareness and engagement by employers with this measure.

The beneficiaries of such advertising are the affected employees, employers and the Australian Government (in terms of this being a measure to remedy non-payment of Superannuation contributions).

The utility of this Amnesty will only be fully borne out with proper advertising of it.

C) REASONABLY-HELD ARGUMENT

This measure should clearly define the expression ‘reasonably-held argument’. It may be that some employers may genuinely (or otherwise) put an argument to the ATO that a genuine employer-employee relationship does not exist.

There are entities that put forward arrangements akin to Sham Contracting who deliberately obfuscate and mislead their ‘employer to employee’ relationship.

Those entities should not be the beneficiary of such Amnesty if their arrangements and arguments are found not to be ‘reasonably held’.

Should any entity’s argument prove to be not ‘reasonably held’, this then leads to a decision that superannuation contributions to the workers should have been made.

The expression should be expressly defined to give some certainty on whether the Amnesty is available to employers who, at some stage after the Amnesty deadline, receive unequivocal advice from the ATO that certain workers were entitled to superannuation contributions from those employers.

D) THE CARROTS AND THE STICK

The incentives for employers to take advantage of this Amnesty are significant but the ATO should also advertise the consequences of not making a disclosure as part of this Amnesty and signal its intent to target employers who choose not to take advantage of it, to the extent that such employers would have been aware of a superannuation guarantee liability.

This could be an opportunity to remind employers that the ATO has real-time ‘single touch payroll’ data that may quickly and readily uncover such non-compliance.

The immediacy of this information should enable the ATO to target non-payment of superannuation contributions as a specific anti-phoenix measure.

IN SUMMARY

This measure reinforces the notion that all working Australians should expect to have certainty in relation to a superannuation ‘nest egg’ upon their retirement.

The Government should always place a premium on employers voluntarily and lawfully making superannuation contributions for those Australians.

Outside of this Amnesty, the premium the Government places on superannuation is clearly reflected in the existing penalty regime for non-payment (and/or late payment) of superannuation by employers.