

25 May 2018

Committee Secretary  
Economics Legislation Committee  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Submitted via [www.aph.gov.au](http://www.aph.gov.au) online submission function

Dear Sir/Madam,

## Submission – Treasury Laws Amendment (2018 Measures No .4) Bill 2018

Chartered Accountants Australia and New Zealand welcomes the invitation to make a submission on the above titled review.

Please note: our submission responds solely to the issues raised in the proposed bill and explanatory memorandum and does not imply our views on other aspects of the superannuation system or on any past or future policy proposals.

We would be pleased to discuss any aspect of our submission.

Chartered Accountants Australia and New Zealand is a professional body comprised of over 120,000 diverse, talented and financially astute members who utilise their skills every day to make a difference for businesses the world over.

Members are known for their professional integrity, principled judgment, financial discipline and a forward-looking approach to business which contributes to the prosperity of our nations.

We focus on the education and lifelong learning of our members, and engage in advocacy and thought leadership in areas of public interest that impact the economy and domestic and international markets. We are a member of the International Federation of Accountants, and are connected globally through the 800,000-strong Global Accounting Alliance and Chartered Accountants Worldwide which brings together leading Institutes in Australia, England and Wales, Ireland, New Zealand, Scotland and South Africa to support and promote over 320,000 Chartered Accountants in more than 180 countries.

We also have a strategic alliance with the Association of Chartered Certified Accountants. The alliance represents 788,000 current and next generation accounting professionals across 181 countries and is one of the largest accounting alliances in the world providing the full range of accounting qualifications to students and business.

## Overall employer compliance with Super Guarantee obligations is high

We note that the ATO told the Senate Economics References Committee that overall most employers make their best endeavours to comply with their Super Guarantee obligations.

There are a small group of employers – typically small to medium sized businesses – which do not comply for a variety of reasons.

In our view the current regulatory settings are inadequate to further improve Super Guarantee (SG) employer compliance. In simple terms there are some employers who do whatever they can – sometimes fair but more likely foul, unethical and illegal – to avoid their legal obligations.

## ATO additional compliance powers

Most interactions with the ATO by taxpayers and their advisers are completed fairly, efficiently, without incident and are fully resolved promptly.

However, we note that since its inception more than 10 years ago the Inspector General of Taxation (IGoT) has initiated a number of reviews into how the Tax Office deals with debt collections, refunds, penalties, interest and settlements from active compliance activities, causes and management of Tax Office decisions, compliance approach to SMEs, use of early and alternative dispute resolution, administration of penalties, management of tax disputes, taxpayer charter and protections and finally employer obligation compliance activities. Collectively this body of work represents a significant amount of the IGoT's activities.

Despite these large number of IGoT reviews, concerns about ATO some compliance activities remains. Recently, after media exposure, the government announced a Treasury review of the Tax Office and the IGoT also announced a review into the ATO's use of garnishee notices.

As a result we believe it may be better to delay giving the Australian Taxation Office additional enforcement powers especially where there might be a risk that they overlap and provide multiple avenues for the Commissioner of Taxation's officers to issue demands for payment or penalties and effectively the granting of unfettered and unchecked powers.

### Complex Tax Administration Legislation

In addition we are concerned about the complex and convoluted nature of the tax administration legislation. It is very difficult for tax professionals to navigate through these complex rules. In reality the complex nature of these legislative provisions increases compliance costs for the Tax Office and all taxpayers.

## Schedule 1 – Directions and penalties in relation to Superannuation Guarantee Charge

There are two parts in this schedule – the ability of the ATO to demand that employers pay the Superannuation Guarantee Charge and receive some form of “education” to help them understand their Super Guarantee (SG) obligations.

## Payment Directions

We note that the ATO currently has power under Division 268 and 269 of the *Taxation Administration Act 1953* (TAA 1953) to direct employers to make SG payments. We have no information as to how frequently it has been used and areas where the ATO's power has been found inadequate.

Subject to our comments above it would be our preference that Division 268 and 269 were amended to give the ATO additional power rather than a new TAA 1953 Division.

## Education Directions

Given the high levels of compliance amongst employers we believe most employers understand their obligation to pay compulsory contributions.

In the majority of cases employers do not pay SG super contributions by the required date because of business cashflow pressures. In some cases employers will not have adequate cash to make these contributions or will prioritise other expenditure, such as essential trade creditors, to ensure they can remain a going concern.

However it is a reality that the Super Guarantee provisions are complex especially in relation to contractors and whether or not they satisfy the employee definition under the SG provisions. This confusion occurs despite the fact that the SG provisions were put in place more than 25 years ago. We note that employers, and their tax advisers, regularly seek binding rulings from the Australian Taxation Office as to the status of contractors. This level of complexity and uncertainty is unacceptable and needs urgent review. We also note the mismatch between employee definitions in industrial relations law, income tax and super guarantee provision. Commonality would help employers comply and employees to better know their rights.

On balance we support the need for proposed Division 384 of the TAA 1953.

## Schedule 3 – Single Touch Payroll

Notwithstanding the Superannuation Guarantee Cross-Agency Working Group's final report, the timing of the proposed STP amendments initially came as a surprise to those – including Chartered Accountants ANZ – involved in the STP Advisory Group.

Whilst it is no doubt true that “A significant proportion of superannuation guarantee non-compliance is attributable to small businesses” (para 3.10 of the Bill's Explanatory Memorandum), we also anticipate that the SME sector may struggle the most with STP implementation.

We acknowledge however that the government's focus on superannuation as a priority area is prompted by the fact that SG non-compliance impacts the retirement incomes of individuals and may contribute to the escalating cost to government of the age pension. SG reporting is already part of the STP design. Chartered Accountants ANZ has long advocated that Stage 1 implementation (1 July 2018 and 1 July 2019) of STP should be uncluttered by additional requests from regulators (not just the ATO) for additional payroll data reports. We think it is important to the overall success of STP to minimise, as much as possible, the compliance costs which employers and their payroll providers will inevitably feel during Stage 1.

We are aware that there have been concerns by some software developers that the proposed amendments would impact their schedules for developing and testing STP Stage 1 software. We would be concerned if this latest legislative development resulted in further delays, and led to even more requests to the ATO for deferred start dates for STP.

In terms of the practical ramifications for employers, those employers who currently calculate ordinary times earnings after salary sacrifice amounts have been taken into account will (as a result of this Bill) need to do an “add back” to comply with the new STP reporting. This prompts the following observations:

- Is there enough time to educate employers \ payroll functions? We note that superannuation salary sacrifice arrangements are not unique to the private sector. They are widely used in the public sector and the charitable sector.
- “Aggressive” salary sacrifice arrangements (e.g. where an individual employee’s entire salary is sacrificed into superannuation) whilst reduced because of lower contribution caps will need to be revisited as a result of the proposed amendments.
- It is not always clear what salary sacrifice contributions are being made, and when (e.g. a year-end bonus where the employee has earlier selected that any bonus entitlement be paid into superannuation). Additional time may be needed to calculate and report under STP these year end, one-off salary sacrifice arrangements.
- Existing ATO guidance on salary sacrifice arrangements will need to be updated to reflect the new measures. The revised guidance will also need to note the difference between salary sacrificing into superannuation and salary sacrificing to obtain other benefits.

Finally, we did not find the draft explanatory memorandum helpful in setting out what the STP changes are actually meant to achieve. We hope in time further information can be provided before this legislation completes its legislative passage.

## Schedule 5 – Compliance Measures

Our concerns expressed above about proposed additional powers being granted to the Tax Office also apply to this schedule. We accept that it may be appropriate to provide the ATO with additional director penalty notice powers.

In our members’ experience the courts will be extremely unlikely to impose a prison sentence for a failure to comply with proposed Section 255-120 of the TAA 1953. To this end we believe it would be better to remove this proposed penalty.

## Schedule 6 – Amendments relating to employee commencement

The ATO is already authorised to disclose certain information to employers relevant to employee commencement (i.e. on-boarding linked to myGov data). The Bill authorises more on-line data sharing via the software interaction with the employer.

This additional authorisation brings into play the government’s proposed new approaches to authentication of identity (i.e. the Digital Identity Framework being developed by the Digital Transformation Agency and agencies such as the ATO).

Few Australians know about this project, nor do they appreciate how pervasive identity authentication will

become as Australia gradually moves towards government online. Related data security and privacy issues have yet to be aired in the public domain.

Identity authentication and data sharing is a work-in-progress project and it is difficult for external stakeholders such as Chartered Accountants Australia and New Zealand to comment. However, as a professional association representing many Chartered Accountants in public practice, we reiterate the importance of providing intermediaries with client-authorised access to client data, including that which may be relevant to STP. For example, a client's tax residency status will have an important bearing on PAYG withholding. An accountant should be able to verify that ATO systems correctly record a client's residency status and the date from which residency status changes.

Should you require any further information or wish to discuss the contents of this submission, please contact Tony Negline, Head of Superannuation on [REDACTED] or by email at [REDACTED]

Yours sincerely,

[REDACTED]

**Liz Stamford FCA**  
**Head of Policy**