

The Senate

Economics Legislation Committee

Provisions of the Tax Laws Amendment
(Superannuation Reporting) Bill 2004

December 2004

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CHAPTER 1

INTRODUCTION

Background

1.1 The Tax Laws Amendment (Superannuation Reporting) Bill 2004 was introduced into the House of Representatives on 18 November 2004 by Mr Mal Brough MP, Minister for Revenue and Assistant Treasurer. The House passed the bill on 6 December 2004.

Purpose of the bill

1.2 The bill amends the *Superannuation Guarantee (Administration) Act 1992* to remove the requirement for employers to report to their employees the amount of superannuation guarantee contributions.

Reference of the bill

1.3 On 1 December 2004, the Senate adopted the Selection of Bills Committee Report No. 12 of 2004 and referred the provisions of the bill to the Senate Economics Legislation Committee for consideration and report by 7 December 2004.

Submissions

1.4 The Committee advertised its inquiry into the bill on the internet and contacted a number of organisations alerting them to the inquiry and inviting them to make a submission. A list of submissions received appears at **Appendix 1**.

Acknowledgment

1.5 The Committee wishes to thank all those who assisted with its inquiry.

CHAPTER 2

THE BILL

Background

2.1 The Superannuation Guarantee scheme places an obligation on employers to contribute a prescribed minimum payment to their employees' complying superannuation fund or retirement savings account. From 1 July 2003 contributions were to be made and reported to employees on a quarterly basis.¹

2.2 The reports to employees must be in writing and contain details of the contributions made to a fund on a pay slip, letter or email. They should note the amount contributed, the name of the fund and, if known, the employee's account number.

2.3 The reporting requirement was, however, opposed by a number of employer groups who saw the measure as adding unnecessarily to the administration load faced by employers, particularly those in small business. On 6 July 2004 the Prime Minister announced that superannuation guarantee reports would be abolished, although the contributions would continue to be made by employers.²

2.4 The bill repeals section 23A of the *Superannuation Guarantee (Administration) Act 1992* which sets out an employer's reporting obligations for superannuation contributions. It will apply to contributions made on or after 1 January 2005.

Issues raised in submissions

2.5 The views contained in submissions on this bill were split between those of employer representatives which expressed strong support for the bill; and those of the Association of Superannuation Funds of Australia and the ACTU which opposed the bill and suggested that it should be rejected by the Senate or, at the very least, that it be amended.

2.6 Explaining the Government's reasons for bringing the bill forward, the Department of Industry, Tourism and Resources Office of Small Business (the OSB) advised the Committee that the Government's Small Business Council had expressed strong opposition to the reporting requirement; members of the National Small Business Forum had raised superannuation reporting as a 'significant concern'; and many key industry bodies including the Small Business Coalition, the National

1 These changes were made by the *Taxation Laws Amendment (Superannuation) Act (No. 2) 2002*.

2 Statement by the Prime Minister, *Committed to Small Business*, 6 July 2004.

Farmer's Federation (NFF) and Catering Australia had also argued against the need for reporting.³

2.7 The substantive concern of those who opposed the bill is that without compulsory employer reporting, certain groups of employees will experience a lower level of certainty about their superannuation contributions. They considered that this will be particularly significant when Choice of Fund legislation takes effect in 2005. The Committee considers the arguments below.

Monitoring Superannuation Guarantee contributions

2.8 The Selection of Bills Committee, in particular, asked this Committee to consider in its inquiry the dangers to workers' superannuation guarantee payments if there is insufficient reporting to enable payments to funds to be monitored.⁴ The Association of Superannuation Funds of Australia Limited (ASFA) considers that quarterly (and preferably monthly) information on an employee's payslip or other format is required:

- to provide greater awareness and certainty as to where superannuation is being paid;
- to provide a check that the money is actually being paid; and
- to assist in the consolidation of 'lost accounts'.

This information is particularly important for those that change jobs.⁵

2.9 ASFA considers that the removal of reporting obligations will allow a number of employers to shirk their Superannuation Guarantee payments:

While most employers try to do the right thing and pay super contributions regularly, unfortunately there are employers who use employee super entitlements for their own cash flow. This deprives employees of the interest earned, may place their life insurance cover in jeopardy, and puts the money at risk if the company goes belly up.⁶

2.10 The extent of this problem can only be estimated:

Prior to the 2003 legislation, the ATO had reported that the groups of employees most affected by employer non-compliance with the Super Guarantee were contractors, part-time and casual employees, women and those employed in regional areas. At present, around 10,000 employees a year report to the ATO a possible non-payment of super by their employer or ex-employer. It has been suggested that this is only the tip of the iceberg,

3 *Submission 4*, Office of Small Business, Department of Industry Tourism and Resources, p. 1.

4 Report No. 12 of 2004, Selection of Bills Committee, dated 1 December 2004, Appendix 5.

5 *Submission 2*, Association of Superannuation Funds of Australia Limited (ASFA), p. 5.

6 Media Release, Association of Superannuation Funds of Australia Limited (ASFA), *Super Choice Handicapped Before It Starts*, dated 18 November 2004.

since many workers are unaware of their employer's non-compliance. The ATO has estimated that it has pursued errant employers for more than \$100 million in super entitlements that have not been paid.⁷

2.11 However, employers see the compliance burden associated with reporting as excessive. According to the National Farmers' Federation (NFF) and the Australian Chamber of Commerce and Industry (ACCI) the reporting requirements have imposed significant burdens on employers and substantially increased compliance costs:

Since the requirement for employers to notify employees was introduced, farmers particularly in the horticultural industry, have inundated NFF with complaints about the difficulties associated with compliance.⁸

2.12 Employer representatives argue that in the case of industries where there is a high casual or itinerant workforce, employers face difficulty in locating those employees to meet the reporting obligation, particularly if the employee leaves no forwarding address.⁹ On the same theme, Restaurant and Catering Australia claimed that business in this sector estimated that up to 80 per cent of notifications may be returned.¹⁰

2.13 The ACCI estimated that the reporting requirement has meant that about 20 million individual and repetitive notifications have been produced every year by Australian employers:

Notices even have to be given to staff who have left a business or who are itinerant workers. That is red-tape overkill.¹¹

2.14 The OSB explained what is involved for employers as follows:

It has been estimated that employers would spend 15 minutes per employee meeting the quarterly report requirements. The costs for the employer have been calculated to be approximately one hour and \$50 per annum per ongoing employee. There are additional costs where the employer decides to purchase payroll upgrades that facilitate payment or other new systems.

It is our understanding that there are very few payroll systems in Australia that can notify the employee after the superannuation contribution has been made. Therefore, reporting in many instances has to be manually generated. Payroll systems are currently set up to provide this detail on the payslip, which is generally sent to the employee before the payment is made. Software manufacturers are seeking to incorporate this function into

7 *Submission 2*, Association of Superannuation Funds of Australia Limited (ASFA), p. 3.

8 News Release NR 85/04, National Farmers' Federation, *Super Reform to Relieve the Burden for Farm Businesses*, dated 7 July 2004.

9 *Submission 4*, Office of Small Business, Department of Industry Tourism and Resources, p. 2.

10 *Submission 3*, Restaurant and Catering Australia.

11 Media Release MR 67/04, Australian Chamber of Commerce and Industry (ACCI), *Prime Minister's Small Business Statement*, dated 7 July 2004.

future programs, however this will involve a cost to the employer. Further, this does not solve the problem for the many small and micro businesses that do not use electronic payroll systems.¹²

2.15 The OSB also pointed out that requiring the employer to make a report does not necessarily guarantee that a contribution will actually be made. The OSB stated that small business had argued that the only real guarantee that contributions had been made was the confirmation provided by the superannuation funds in their annual reporting to their members.¹³

2.16 The Committee notes that many employers report more frequently than quarterly by including superannuation contribution information on payslip advices. This obligation is contained throughout various Australian workplace legislation as well as State and Federal awards¹⁴ and will not be affected by the bill.

2.17 However, not all employees are covered by awards or agreements, and not all awards specify that information about the amount of superannuation actually paid is to be provided. According to ASFA, the existing statutory requirement to report contributions paid is needed to 'level the playing field' both for employers in relation to their compliance obligations and for employees in relation to their rights.¹⁵ Further, the ACTU submitted that the requirement for employers to provide relevant information quarterly, at least where it is not already provided through payslips, is a necessary corollary to quarterly contributions.¹⁶

Choice of superannuation fund

2.18 From 1 July 2005 many employees will be able to choose into which superannuation fund their payments will be made. ASFA considers that the move to abolish employer reporting is contradictory to the spirit of choice, which is supposed to be about giving employees more control over their superannuation.¹⁷ Submissions were concerned that the introduction of choice of fund gives additional significance to the need for employees to be able to check that contributions are made, and to whom they are made.¹⁸

2.19 Generally, many employees do not have a good understanding of or interest in superannuation. ASFA argues that the reporting obligation is a form of employee

12 *Submission 4*, Office of Small Business, Department of Industry, Tourism and Resources, pp. 2-3.

13 *Submission 4*, Office of Small Business, Department of Industry Tourism and Resources, p. 2.

14 Explanatory memorandum, p. 5.

15 *Submission 2*, Association of Superannuation Funds of Australia Limited (ASFA), p. 4.

16 *Submission 1*, ACTU, p. 2.

17 *Submission 2*, Association of Superannuation Funds of Australia Limited (ASFA), p. 3.

18 *Submission 1*, ACTU, p. 2.

education as it is quite likely that an employee will take more notice of information about what the employer is paying to a fund on their behalf when it is associated with current entitlements to salary and wages. It is perhaps more difficult for fund communications to claim this level of attention.¹⁹

2.20 However, the ACCI considers that the change in employer reporting requirements may mean that some employees liaise more directly with their superannuation fund, which it considers to be a desirable outcome in relation to the introduction of choice of fund:

With superannuation choice of fund to be introduced in mid 2005 employees will be better off [if] they have already been pro-active in dealing with their superannuation fund. Many employers will have new paperwork obligations at that time, and the repeal of this unnecessary quarterly notification requirement will be timely.²⁰

Possible amendments

2.21 Both ASFA and the ACTU, while preferring that the measure remain in place, suggested possible compromise positions. For example, the Association of Superannuation Funds of Australia Limited (ASFA) stated in its submission that:

An alternative option not canvassed in the preparation of the Bill is that of making minor changes to accommodate specific difficulties. As employers are currently required to annually report details of income to these employees for taxation purposes, why not permit the SG reporting to be combined with tax reporting for this class of individuals.

A quarterly reporting exemption might also be given to an employer where the employee has left no forwarding address. In that situation the obligation could be [waived] or aligned with the income tax reporting requirements.²¹

2.22 The ACTU also suggested amending the bill to exempt employers from providing quarterly information if both contributions and fund are specified in regular payslips:

The ACTU submits that the Bill should be rejected by the Senate or, at the very least, that it be amended to provide that quarterly information must be given by the employer to the employee unless both contributions and fund are specified in regular payslips.²²

2.23 The brevity of the Committee's inquiry has not allowed these suggestions to be explored and the Committee has not agreed on any position in relation to them.

19 *Submission 2*, Association of Superannuation Funds of Australia Limited (ASFA), p. 3.

20 Media Release MR 67/04, Australian Chamber of Commerce and Industry (ACCI), *Prime Minister's Small Business Statement*, dated 7 July 2004.

21 *Submission 2*, Association of Superannuation Funds of Australia Limited (ASFA), p. 4.

22 *Submission 1*, ACTU, p. 2.

However, the Committee has included them in this report for the Senate's consideration, should amendments to the bill be contemplated.

Conclusions and Recommendations

2.24 The Committee notes that the reporting requirement was introduced 'with the good intention of supporting the administration of the Superannuation Guarantee system by encouraging employer compliance through the early identification of non-compliance and enhancing employees' sense of ownership over their superannuation accounts'.²³

2.25 Further, when the reporting requirement was introduced, the Minister for Revenue and Assistant Treasurer, in the second reading debate, said that the measures 'will encourage employees to take an interest in their superannuation and alert them to any non-compliance sooner'.²⁴

2.26 While these are commendable objectives, they must be balanced against their practicality and the compliance burden they impose. Strong representations have clearly been made to the Government that the quarterly reporting requirement imposes an extra compliance load on some employers which they consider unacceptable. Further in the case of workers who leave no forwarding address following short term employment, sending reports may be futile.

2.27 The Committee also notes that the Government had committed itself to removing this reporting requirement prior to the election.

2.28 It is possible that if this bill is passed, there will be some reduction in the amount of information available to employees concerning the superannuation contributions made on their behalf by employers. However, reporting of contributions made will still be available to employees through the requirement for funds to report annually on payments received. This form of reporting has greater integrity than employer advices, as it records the payments actually made.

The Committee recommends that the bill be passed without amendment.

Senator George Brandis
Chair

23 *Submission 4*, Office of Small Business, Department of Industry Tourism and Resources, p. 2.

24 *Senate Hansard*, 27 June 2002, p. 2962.

Tax Laws Amendment (Superannuation Reporting) Bill 2004

Labor Comments

The Labor party agrees that there are some practical problems associated with the current reporting requirement that employers notify **all** employees of the superannuation guarantee (SG) contributions that have been made on their behalf. Difficulties undoubtedly occur in some industries with a high turnover in employees, for example, some sectors of the hospitality and agricultures industries.

Accordingly, Labor suggests that a more appropriate approach to these problems is a "carve out", using regulation of those industry sectors where there is a real and substantial problem, instead of the blanket approach of removing the reporting requirement from all employers. This reasonable and sensible approach is not supported by the Government.

It is hypocritical of the Government and some industry associations who have made submissions, to complain about additional paperwork and cost for business, when the introduction of so-called fund choice on 1 July 2005 will lead to a far greater increase in paper work and cost than the measure under consideration.

Quarterly payments were introduced for a number of reasons one of which was safety; a consumer protection measure in anticipation of the proposed introduction of a fund choice regime. There are significant non-payment problems in relation to SG and often the problem is not identified until the business concerned is bankrupt or in the hands of the liquidator.

Whilst it is difficult to obtain an accurate number of the SG payment defaults on business failure, it is certainly in the tens of thousands in each year. Many workers have lost years of superannuation in these circumstances and most often they are those workers who can least afford to lose their superannuation savings – low income workers and those who will face difficulty finding employment after the collapse of their employer's business.

At the very least a regular reporting mechanism should be provided to facilitate the identification of defaulting employers and to track the size of the default problem.

Labor will therefore support the Bill but with an amendment to the following affect.

A requirement that the Australian Tax Office in its annual report, clearly indicate the number of non-complying employers, the number of employees affected by non compliance, and the level of enforcement and actual recovery of unpaid SG.

Senator Ursula Stephens
Deputy Chair

Appendix 1

SUBMISSIONS RECEIVED

Submission Number	Submittor
1	ACTU
2	The Association of Superannuation Funds of Australia Ltd
3	Restaurant & Catering Australia
4	Department of Industry Tourism and Resources – Office of Small Business
5	National Farmers' Federation
6	Australian Chamber of Commerce and Industry (ACCI)