

**Submission to**

**Senate Economics Legislation Committee**

**Inquiry into the**

**Tax Laws Amendment (Superannuation  
Reporting)  
Bill 2004**

**by**

**The Association of Superannuation Funds of  
Australia Ltd**

**December 2004**

## **1. Introduction**

ASFA is a non-profit, non-party political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. As such it is the “Voice of Super”.

ASFA's 600 or so constituent members have been estimated to be responsible for around \$420 billion of assets, about 80 per cent of the total superannuation funds under management of \$508 billion as at March 2003. ASFA member funds in aggregate also represent around 80 per cent of Australians with superannuation.

ASFA's interest in the removal of the current reporting requirement flows from the implications of this for employees and fund members under the ‘choice of funds’ regime that will apply from 1 July 2005.

## **2. The legislative proposal**

The *Tax Laws (Superannuation Reporting) Bill 2004* proposes to remove, from 1 January 2005, the requirement that an employer must provide each employee with prescribed information about the payment of mandated employer superannuation guarantee contributions within 30 days of the contribution being made. It should be noted that, through administrative interpretation, the Commissioner of Taxation interprets the requirement as being to give one report per quarter to the employee, with that report being given within 30 days of the last contribution for the quarter.

The proposal to remove the reporting requirement was announced in July 2004, even though the current reporting requirement had only been in place in respect of contributions made after 1 July 2003. The announcement was made before the review timeframe proposed by Government when the legislation was enacted. At that time the Government committed to a “substantial review of the effects of any change adopted – including the costs on business - ... conducted by the ATO 3 years after its introduction.” That review should have occurred after 1 July 2006. ASFA is not aware of any industry participation in any review.

## **3. ASFA Comments on the legislative proposal**

Passage of the Tax Laws Amendment (Superannuation Reporting) Bill 2004 would implement the proposal to exempt employers from reporting quarterly to employees that their super has been paid into an appropriate fund. ASFA strongly believes that this will

disadvantage many of Australia's most vulnerable employees, particularly women and rural workers, and adversely impact on the integrity of the choice of fund regime.

ASFA applauded the Government's decision in July 2003 to introduce employer quarterly payment of superannuation entitlements and the reporting obligation. Both these measures help safeguard employees' superannuation. The superannuation industry saw the reporting obligation as particularly useful in tackling the problem of lost superannuation accounts, as it would help employees keep track of their contributions.

At an even more basic level, contributions reporting is a form of employee 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.

Although the quarterly payment rule remains, removal of the reporting requirement will run counter to the Government's year-old promise to help employees monitor whether their employer is paying their superannuation in the first place and, from 1 July 2005, whether the employer is paying it into the fund they have chosen.

ASFA considers this move to be contradictory to the spirit of choice, which is supposed to be about giving employees more control over their super. Passage of this bill would see many employees disadvantaged when choice of fund is introduced next year.

Workers in the small business sector will be particularly disadvantaged. 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, 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.

The Explanatory Memorandum states that:

*1.3 Employers have expressed concerns in relation to the cost of compliance of this measure. A key concern has been the time frame for reporting, with employers required to report within 30 days of a contribution actually being made.*

*1.4 Many employers report more frequently by including information on payslip advices pertaining to superannuation contributions. This obligation is contained throughout various Australian workplace legislation as well as State and Federal awards. As a result of the widespread requirements to report superannuation contributions on payslips, combined with the requirement for superannuation funds to report at least annually to their members on both employer and member contributions, it is unnecessary for employers to provide additional reporting.*

Currently all employers must by law provide wage slips and an annual PAYG Payment Summary for each employee. As the EM notes, many employers are also required under industrial awards to report about superannuation. But not all employees are covered by awards, and not all awards provide information about the amount of superannuation actually paid. This statutory requirement to report contributions paid is therefore needed to “level the playing field” both for employers in relation to their compliance obligations and for employees in relation to their rights.

Where Australian workplace legislation, State or Federal awards require an employer to report on payslips contributions **paid**, meeting that obligation will also meet the SG requirement, provided the name of the fund is included on the payslip. If however, the award requirement is merely to report the superannuation entitlement, more information will need to be provided.

ASFA is concerned that a number of employers would find refuge for poor employment practices in this proposed reduction of obligations. However, ASFA does have concern for the majority of employers who are conscientious and will continue to pay and report to assist their employees. There is no doubt the introduction of choice of fund will add to their compliance burden.

Notwithstanding this, the Association does not see the imminent increase in employers’ obligations under choice of fund as a valid reason for abandoning the legislative reporting requirement and eroding the rights of employees. Rather, we see urgent need for the government to provide information and education to employers on their obligations and the procedures that they will need to follow under the choice regime

While ASFA acknowledges the concerns of some employer groups in relation to their reporting obligations, particularly those employing temporary and itinerant workers, we are concerned that no attempt has been made at finding a solution that would both address the concerns of these employers and retain the rights of their employees to this information

The Explanatory Memorandum states that:

Reporting after the contributions are made can be a particular issue for employers with a high turnover of employees, particularly casual and itinerant work forces such as those in the hospitality and horticultural industries. These employers have difficulty locating former employees for the purpose of reporting.

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 waved or aligned with the income tax reporting requirements.

ASFA has recently commented to the Treasury on what it believes will be needed on the Standard Choice Form and on what information the employee needs to give to the employer so that the a choice is made. In our deliberations we have been conscious of the need to limit the workload of the employer. We have also been preparing information sheets for the Association's website to assist employers in understanding some of the more complex provisions in the legislation, for example on "exemptions".

ASFA is also a major player in the industry's move towards electronic solutions to superannuation transactions, for example in sending contributions from the employer to the fund.

In summary ASFA believes that a uniform requirement to provide quarterly (and preferably monthly) information to all employees through a payslip or other format is required:

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

This information and assistance is particularly important for those that change jobs.

ASFA is concerned that none of the options canvassed in the Explanatory Memorandum adequately addresses the benefits gained by providing the superannuation information.

In a choice of fund environment, the only effective means many employees will have of determining whether their current contributions are consistently being paid, and whether their employer is complying with the choice requirements, is through the information contained on the superannuation contributions report from their employer. Some employees will, of course, have access to online account information but not all funds have this capability and, more importantly, many Australians do not have access to this type of facility even when it is offered.