

# **Senate Select Committee on Superannuation and Financial Services**

## **Main Inquiry Reference (c)**

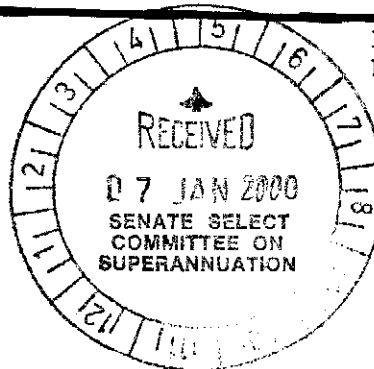
**Submission No. 5**

**Submittor:** Ms Anne Byrne  
Industry Funds Forum  
Level 28, Casselden Place  
2 Lonsdale Street  
MELBOURNE VIC 3000  
☎ - (03) 9657 4244  
📄 - (03) 9657 4243

**INDUSTRY FUNDS FORUM**

Level 28  
Casselden Place  
2 Lonsdale Street  
MELBOURNE VIC 3000

Ph: (03) 9657 4244  
Fax: (03) 9657 4243



**TO:** The Secretary  
Senate Select Committee on Superannuation & Financial Services  
Parliament House  
Canberra ACT 2600

**FAX NO:** 02 6277 3130

**FROM:** Ms Ann Byrne  
Convenor  
Industry Funds Forum

**DATE:** 7 January 2000

**SUBJECT:** Enforcement of the Superannuation Guarantee Charge

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Dear Sir/Madam

Please find attached submission from Industry Funds Forum (IFF) on the Enforcement of the Superannuation Guarantee Charge.

IFF would be pleased to provide further information to the Committee if required.

Yours sincerely

A handwritten signature in cursive script, appearing to read "A Byrne".

**MS ANN BYRNE**  
Convenor

*4 pages attached.*

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7 January 2000

The Secretary  
Senate Select Committee on Superannuation and Financial Services  
Parliament House  
CANBERRA ACT 2600

Dear Secretary

### **Enforcement of the Superannuation Guarantee Charge**

The Industry Funds Forum (IFF) represents 23 industry funds with approximately 3 million members, 150,000 participating employers and over \$15 billion in assets. The IFF appreciates the opportunity to make a submission to the Senate Select Committee on Superannuation and Financial Services on the third matter that was initially referred to it on 11 October 1999, ie enforcement of the Superannuation Guarantee Charge.

The IFF believes that effective enforcement of the Superannuation Guarantee Charge is an essential element of the operation of the national superannuation system. If the enforcement regime for the Superannuation Guarantee Charge is not totally effective, the integrity of this key element of the national savings policy can be called into question.

In their 1999 Annual Compliance Audit Survey the Australian Taxation Office reported employer compliance rates to be the same as the 1998 survey at the following levels:

Totally compliant	71%
Partially non-compliant	28%
Totally non-compliant	1%.

These survey results highlight a disturbing level of partial or total non-compliance – 3 out of every 10 employers. The full details of the survey results and its underlining statistics should be sourced from the ATO. The IFF believes that these results demonstrate that the enforcement of the Superannuation Guarantee Charge requires substantial improvement.

There remains a disturbing number of instances where employees do not receive their lawful superannuation entitlements. The IFF would be pleased to provide details of instances of significant employer delinquency in the payment of Superannuation Guarantee obligations.

These problems can occur because of:

1. Employers wilfully avoiding their legal obligations and choosing to not make the required superannuation payments, and instead retaining the money that should rightfully be paid into their employees' superannuation accounts;
2. Employers experiencing cashflow difficulties and using this as a basis to not make the required superannuation payments; and
3. Employers going out of business and not remaining in existence to make annual (or other) superannuation guarantee payments.

It should be noted that **all** of the trustee directors of the superannuation funds that are members of the IFF recognise enforcement of the Superannuation Guarantee Charge as a problem. All IFF Funds have implemented arrears collection procedures to increase compliance with the Superannuation Guarantee and their respective Trust Deeds. This is in addition to the ATO Compliance Program. From a *member* perspective the members suffer the obvious disadvantage of not having superannuation payments made into their account notwithstanding the lawful entitlement that exists. Aside from the obvious impact on the members' account balance, non-payment may also result in a member losing insurance cover. It is noteworthy that *employers*, who make superannuation payments of the correct quantum and at the appropriate time, are very conscious that they are commercially disadvantaged when their competitors do not make correct and timely payments.

An issue directly associated with the enforcement of the Superannuation Guarantee Charge is the enforcement of the requirement for employers to remit to the relevant superannuation fund voluntary *member* contributions within 28 days of the end of the month after they have been deducted. There appears to be no effective enforcement of this statutory provision. If the Superannuation Guarantee payments were required on a monthly basis, the enforcement of the two types of payments could be combined, thus ensuring that employees' entitlements were not put at such risk.

The IFF proposes five practical means to reduce the incidence of these problems and to improve the operation of the Superannuation Guarantee system.

#### 1. **Monthly Payments**

The current arrangement whereby employers are only required to make Superannuation Guarantee payments on an annual basis is the single greatest contributor to the enforcement problems that exist with the Superannuation Guarantee Charge. Employers who elect to make annual payments are able to hide any cashflow and business survival problems by retaining accrued superannuation entitlements for up to 13 months, ie from 1 July of one year to 28 July of the following year.

The enforcement difficulties caused by the impact of the cashflow and business failure problems identified in points 2 and 3 above would be substantially reduced if employers were legislatively required to make Superannuation Guarantee payments on a monthly basis. It should be remembered that these payments are the lawful

remuneration entitlements of the employees, just as wages and salaries are, and should be remitted to their personal superannuation accounts at the earliest opportunity.

As the Committee would be aware, the Superannuation Guarantee legislation provides for quarterly payments. The extension to annual payments has occurred through regulation. Accordingly if it was considered appropriate to phase in monthly payments, the current regulations could be abolished forthwith as part of a process to introduce monthly payments.

2. **Australian Taxation Office Enforcement Practices**

The IFF believes that the Australian Taxation Office (ATO) should increase the resources committed to detecting non-compliance and prosecuting employers who flout the law. As noted above, this would have the support of members and employers and their respective representatives. IFF Funds who commit their resources (ie members' money) to seeking payments for members from employers who do not make correct or timely payments usually find that the ATO is not aware of these transgressions. In other words were it not for the activities of the Funds, using members' money, to seek the enforcement of the Superannuation Guarantee Charge, such enforcement would in many cases simply not occur.

3. **Employer Penalties**

The current penalties applied to employers who do not make appropriate Superannuation Guarantee payments are applied with little discretion. The IFF believes that the ATO should be able to apply more judgement as to whether to pursue statutory penalties for non-compliance on delinquent employers. In most cases penalties are appropriate. However in some cases honest mistakes are made by employers, and these employers may incur a double penalty of making a payment to the superannuation fund, plus the statutory penalty. The ATO should have greater flexibility to decide whether a penalty should be pursued or not. This would involve the ATO liaising with relevant stakeholders to judge whether a penalty is appropriate. In this situation the ATO would undertake discussions with relevant stakeholders such as the employer, the superannuation fund, the employees and their union if appropriate.

4. **Delay the introduction of the proposed Choice of Fund legislation**

All IFF Funds employ resources, ie members' funds, to pursue employers who do not make payments of the correct quantum or by the appropriate time. Employers who are not making payments of the correct quantum or by the appropriate time, are likely to use the opportunity presented by the proposed passage of the Choice of Fund legislation, to cease participation in superannuation funds that they are only participating in due to an industrial obligation to do so. They are likely to transfer their employees to superannuation funds that do not so assiduously protect members' interests and do not vigorously seek the employers to make appropriate payments. It is imperative that, before Choice of Fund legislation is introduced, all of the proposals outlined in this submission, in particular that relating to monthly payments, be implemented to ensure that some employers do not use the Choice of Fund legislation as a device to circumvent their Superannuation Guarantee Charge obligations.

5. **Priority of superannuation guarantee payments for companies in liquidation**

The statutory priority for payment of moneys by insolvent companies has superannuation on the first level of ranking. This is the same level as wages and salaries, in recognition that both are earned entitlements of employees. However, it is not widely known that superannuation entitlements share top priority for payment in these situations. The superannuation funds' arrears collection agencies are often required to inform Administrators of this priority. The Government must join industry in promoting the priority order of payments by insolvent companies and, in the context of this issue, ensure that superannuation payments are given the top ranking in all situations.

The IFF would be pleased to provide further information to the Committee at a public hearing or any other forum deemed appropriate by the Committee.

Yours sincerely



**MS ANN BYRNE**  
Convenor