



FINANCIAL
SERVICES
COUNCIL

Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019

FSC submission

October 2019



1 About the Financial Services Council

The FSC is a leading peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services.

Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers, financial advisory networks and licensed trustee companies. Our Supporting Members represent the professional services firms such as ICT, consulting, accounting, legal, recruitment, actuarial and research houses.

The financial services industry is responsible for investing almost \$3 trillion on behalf of more than 14.8 million Australians. The pool of funds under management is larger than Australia's GDP and the capitalisation of the Australian Securities Exchange, and is the fourth largest pool of managed funds in the world.

2 FSC comments

The FSC is pleased to provide a submission on the Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019 (**the current Bill**).

This legislation implements an amnesty for employers who voluntarily disclose they are not compliant with superannuation guarantee (**SG**) requirements.

The amnesty was previously announced on 24 May 2018 to start on the date of announcement. The amnesty was included in Treasury Laws Amendment (2018 Superannuation Measures No. 1) Bill 2018 (**the previous Bill**). The previous Bill lapsed with the 2019 election.¹

The amnesty in the current Bill differs from the amnesty in the previous Bill in that it is proposed the amnesty will extend for a longer period. The current Bill has the amnesty ending six months after the Royal Assent of the current Bill, compared with an end date of May 2019 for the previous Bill.

The FSC indicated its support for the previous Bill at the time, stating the following:²

- The FSC supports measures aimed at ensuring workers receive their full SG entitlements. It is not acceptable for employers to deliberately withhold SG payments on an ongoing basis, and we have supported legislation that proposes to increase penalties for these businesses.
- However, a distinction should be made between recalcitrant employers and those who may be inadvertently non-compliant, for example, due to administrative errors in

¹ See: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6126

² See: <https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id:%22committees/commsen/1c8de347-a6fc-4948-add3-0db958c393ca/0000%22>

payments, or employers who are only non-compliant for a short period. In these circumstances, additional fees and penalties could create a disincentive to employers coming forward and paying employees what they are owed.

- By removing these additional penalties without taking away any entitlements from employees, an amnesty can provide an environment that will actively encourage employers to rectify past non-payment.
- Combined with other measures, including increased penalties for non-compliance detected by the ATO and the extension of Single Touch Payroll (**STP**) to all businesses, an amnesty will help to ensure more workers receive their SG entitlements.

We also note the following:

- The current Bill proposes increased penalties where an employer chooses not to make a voluntary disclosure during the amnesty period (EM at 1.2 and 1.70ff). This approach should encourage the use of the amnesty.
- The Government has estimated that an additional 7,000 businesses will come forward and admit to SG non-compliance due to the amnesty, resulting in increased super contributions of \$160m.
- The amnesty will not reduce the amount of superannuation paid into a member's superannuation account – the amnesty relates to the penalties rather than the primary superannuation liability. Having a larger number of employers rectifying their SG underpayment/non payment is of greater importance to superannuation members than the application of penalties.
- We do not consider the amnesty would promote non-compliance with the SG, as employers would still be liable for their primary SG liability, and other reforms underway (particularly STP) will make it harder for employers to be non-compliant with SG requirements in the future.

On this basis, the FSC supports the amnesty in the current Bill.