

Workers need real action on unpaid super

Submission by the Australian Council of Trade Unions to the
Senate Economics Legislation Committee Inquiry into Treasury
Laws Amendment (2018 Measures No. 4) Bill 2018
[Provisions]

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Introduction

Since its formation in 1927, the ACTU has been the peak trade union body in Australia. There is no other national confederation representing unions. For 90 years the ACTU has played the leading role in advocating for workers for the improvement of wages, conditions and social welfare.

The ACTU consists of affiliated unions and State and regional trades and labour councils. There are currently 43 ACTU affiliates. They have approximately 2 million members who are engaged across a broad spectrum of industries and occupations in the public and private sector.

The ACTU and its affiliated unions founded industry superannuation, and won the right for all workers to be entitled to super. The ACTU continues to be a leader in the superannuation sector, advocating to ensure workers retain their rights over their deferred wages, and superannuation delivers adequate retirement outcomes for workers.

Treasury Laws Amendment (2018 Measures No. 4) Bill 2018 [Provisions] (the Bill), is inadequate to achieve real action on unpaid super and shows this Government is not interested in ensuring all workers receive the superannuation to which they are entitled. The Government should pursue reforms which have the support of unions and the industry and will have impact at scale.

Schedules 1 to 6 – Superannuation Guarantee Integrity

The package announced by the Government is inadequate to address the scale and scope of superannuation theft. The measures announced will do little to proactively police the non-payment and underpayment of the superannuation guarantee, or superannuation negotiated through a collective agreement.

Workers lose \$5.6 billion per year in unpaid superannuation,¹ and the Government's piecemeal and *post hoc* approach unpaid super shows it is not serious, nor does it intend to take real action on unpaid super. The Government has willfully ignored the Senate Economic References Committee report *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*² which recommends real action on unpaid super, and would represent a significant first step in addressing the systemic shortfall of superannuation payments.

Schedule 1 Directions and penalties in relation to superannuation guarantee charge

This measure will offer no real deterrence to employers currently flouting the law by not paying the superannuation guarantee. Underpayment of the superannuation guarantee is rife because it is not obvious to workers, workers and their representatives are not able to inspect their employers' records of payment, and the superannuation guarantee charge is not due at the same time wages are paid.

This schedule will only improve the tiny minority of cases which are brought to the attention of the Commissioner of Taxation, and which the Commissioner actually issues directions. Importantly, this scheme will not deter rogue employers from not paying the superannuation guarantee as the initial redress will be to only pay the superannuation which is owed.

Workers can go for years without accumulating superannuation, without appropriate insurance, and without earning returns from the fund, while the unscrupulous employer is taking the minor risk that they will be caught. Given \$5.6 billion of superannuation is unpaid or underpaid each year, the risk that they will be caught underpaying their workers is low.

The most the employer will suffer is a direction to pay the superannuation owed, and a direction to attend an approved education course. Real penalties only apply to those who have been ordered

¹ Industry Super Australia, 2017. *Senate Economics Committee: Inquiry into Superannuation Guarantee non-payment*, Melbourne: Industry Super Australia.

² The Australian Senate Economics Committee, 2017. *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, Canberra: Commonwealth of Australia.

to pay the unpaid superannuation or attend an approved course and have not complied. This will apply to so few cases it will do nothing to change behavior and penalties can still be waived at the discretion of the Commissioner. The proposed legislation will be treated as an acceptable gamble to those who wish to flout the law. The only way to ensure the superannuation guarantee is paid is through proactive compliance and the empowerment of workers to pursue their unpaid super.

Schedules 2 to 6

Schedules 2 to 6 are underpinned by the belief that increasing the amount of information available to the Commissioner and related agencies, or increasing the amount of information the ATO is able to disclose, will solve unpaid superannuation. After years of cuts to the resources of the ATO and the Fair Work Ombudsman, there is little to no ability for proactive action to be taken. Similarly, the ATO has thus far been unable to identify the size of the SG gap, and its current approach is reactive to cases of superannuation guarantee non-payment.

Schedule 2 relies on an increase in the proactive measures undertaken by the ATO but does not mandate any action. If the ATO suspects any worker of suffering underpayment, they should be immediately alerted to the fact and informed of all paths of recourse.

Schedule 3 cynically relies upon the passage of the controversial Treasury Laws Amendment (Improving Member Outcomes and Accountability Measure No. 2) Bill 2017, which would strip rights of workers to bargain for their preferred fund in enterprise agreements. Schedule 3 should be amended to include Schedule 2 of Treasury Laws Amendment (Improving Member Outcomes and Accountability Measure No. 2) Bill 2017 in order to ensure that the law is not held hostage to the Government's priority of giving the banks more control of super.

Without a significant increase to the resources of the ATO, proactive compliance measures are unlikely to materialise. This meek legislation shows how reluctant and unenthusiastic the Government is about addressing unpaid superannuation.

ACTU Recommendations for Unpaid Superannuation

The ACTU believes that many reforms are required to address Superannuation Guarantee non-compliance.

- Empower workers and their representatives to inspect employers' records of payment of the SG;
- Empower workers and their representatives, such as their superannuation fund or union, to take action against employers for the non-payment of the superannuation guarantee or superannuation contributions;
- The Superannuation Guarantee should be included in the National Employment Standards so that workers currently falling through the gaps in our system are entitled to the superannuation guarantee, and workers will be able to pursue unpaid super in the same fashion as unpaid wages;
- SG contributions should be paid at the same time as wages and shown on remittance advice with workers' contributions;
- SG contributions should be paid on all earnings, removing the consistent ambiguity between ordinary time earnings and actual salary paid – a distinction which compounds poorer retirement outcomes for women;
- ATO and FWO must be properly resourced to proactively pursue unpaid super;
- The ATO should be given the capacity to match employer payroll and PAYE data with SGC payments for the same period; and,
- That the \$450 minimum per month earning threshold is abolished, and that all workers (regardless of age) are entitled to the SG.

Many of the ACTU's reforms are supported by the Senate Economics References Committee report *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*.

Works cited

Industry Super Australia, 2017. *Senate Economics Committee: Inquiry into Superannuation Guarantee non-payment*, Melbourne: Industry Super Australia.

The Australian Senate Economics Committee, 2017. *Superbad – Wage theft and non-compliance of the Superannuation Guarantee*, Canberra: Commonwealth of Australia.

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