

# SUBMISSION

Submission to Senate  
Education and  
Employment Legislation  
Committee — *Fair Work  
Legislation Amendment  
(Protecting Worker  
Entitlements) Bill 2023:  
Schedule 3*

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14 April 2023

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File: 2023/11

Senate Education and Employment Legislation Committee

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Parliament House

Canberra ACT 2600

Via email: [eec.sen@aph.gov.au](mailto:eec.sen@aph.gov.au)

14 April 2023

Dear Sir / Madam

**Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023**

The Association of Superannuation Funds of Australia (ASFA) is pleased to provide this submission in response to the Committee's inquiry into the *Fair Work Legislation Amendment (Protecting Worker Entitlements) Bill 2023* (the Bill). This submission focuses on Schedule 3, which contains amendments introducing an entitlement to superannuation in the National Employment Standards.

**About ASFA**

ASFA is a non-profit, non-partisan national organisation whose mission is to continuously improve the superannuation system, so all Australians can enjoy a comfortable and dignified retirement. We focus on the issues that affect the entire Australian superannuation system and its \$3.3 trillion in retirement savings. Our membership is across all parts of the industry, including corporate, public sector, industry and retail superannuation funds, and associated service providers, representing almost 90 per cent of the 17 million Australians with superannuation.

**Unpaid Superannuation Guarantee (SG) contributions**

ASFA supports measures to address the issue of unpaid SG contributions. On the most recently available data the ATO estimates a net SG gap of \$3.4 billion (2019-20). This is the shortfall in SG payments by employers and represents 4.9 per cent of the total expected SG contributions for the year. For context, the gap has not improved in recent years and, concerningly, the SG charge 'debt on hand' has continued to trend upward, last measured at around \$3.1 billion.

Unpaid superannuation contributions come at a significant cost to superannuation member retirement outcomes. ASFA has proposed a range of reforms which would address the issue of unpaid SG, most recently in

its 2023-24 pre-Budget submission to government.<sup>1</sup> Our suggested changes primarily focus on requiring the alignment of SG payments with wages, and enhancements to enforcement relating to unpaid SG amounts.

### **Comments in relation to Schedule 3 – Superannuation**

Schedule 3 of the Bill introduces an entitlement to superannuation contributions in the National Employment Standards (NES). This extends an explicit requirement in the Fair Work Act for employers to make contributions to a superannuation fund for their employees, thereby avoiding liability to pay the SG Charge. This amendment would expand to a broader range of employees the right to pursue and recover unpaid SG contributions from an employer, in addition to the ATO's regulatory powers of enforcement in this area. In particular, this will benefit non-award employees and those not covered by an Enterprise Agreement which contains a term providing a right to super.

ASFA notes the Fair Work Ombudsman would maintain its role in being able to pursue unpaid superannuation on behalf of employees. We also note the right to recover entitlements would not apply where the ATO has instituted court proceedings to recover SG charge amounts in respect of the same unpaid contributions. These are sensible settings which allow the new entitlement to operate efficiently and in alignment with existing mechanisms.

ASFA supports the introduction of the entitlement proposed in the Bill. On its own this measure will not solve the problem of non-payment of SG contributions by employers, however, it represents a welcome improvement to the broader framework for recovering unpaid SG contributions.

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If you have any queries or comments in relation to the content of our submission, please contact me on 0435 742 440 or by email [gmccrea@superannuation.asn.au](mailto:gmccrea@superannuation.asn.au) or Fiona Galbraith, Director Policy, on (03) 9225 4021 or by email [fgalbraith@superannuation.asn.au](mailto:fgalbraith@superannuation.asn.au) or Harvey Russell, Senior Policy Advisor on (02) 8079 0803 or by email [hrussell@superannuation.asn.au](mailto:hrussell@superannuation.asn.au).

Yours sincerely

Glen McCrea

Deputy CEO and Chief Policy Officer

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<sup>1</sup> ASFA, [Pre-Budget Submission for the 2023-24 Budget](#)