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The Manager
Contributions and Accumulations Unit
Personal and Retirement Income Division
The Treasury
Langton Crescent
PARKES ACT 2600

Email: DisplayMembership@treasury.gov.au

Dear Manager,

**EXPOSURE DRAFT: PAYSLIP REPORTING OF SUPERANNUATION
CONTRIBUTIONS**

The Association of Superannuation Funds of Australia (ASFA) would like to provide this submission in response to the call for comments on the above exposure draft legislation and explanatory statement.

About ASFA

ASFA is a non-profit, non-political national organisation whose mission is to protect, promote and advance the interests of Australia's superannuation funds, their trustees and their members. We focus on the issues that affect the entire superannuation industry. Our membership, which includes corporate, public sector, industry and retail superannuation funds, plus self-managed superannuation funds and small APRA funds through its service provider membership, represent over 90% of the 12 million Australians with superannuation.

Comments on the measure

We note that the purpose of the legislation is to implement the Government's Securing Super reforms with respect to the reporting on payslips of information about superannuation contributions.

We further note that this is to be achieved by transferring the reporting requirement from the Fair Work Regulations to the SIS Act and that by doing this it will enable the reporting requirement (and the reach of the Fair Work ombudsman) to be extended to a broader range of employers.

ASFA is supportive of the proposal.

Once fully implemented this measure should result in consistent payslip reporting of superannuation contributions by employers and extend coverage to a larger number of employees. Importantly, it has the potential to improve both employer compliance with superannuation obligations and the employee engagement with the superannuation system.

ASFA recognises, and is slightly concerned, that following enactment of the legislation, an employer will need to access both the Fair Work Regulations and the SIS Act and regulations to determine their exact pay slip reporting requirements. ASFA suggests that this situation be addressed by including a note in Fair Work Regulation 3.46 outlining the additional requirement.

Of separate concern is the statement on page 3 of the explanatory memorandum that 'Software providers advise that the measure would require a relatively straightforward modification of existing software, requiring the addition of a field for the expected payment date.' This makes light of the fact that this change will impact 700,000 employers in less than five months time - from 1 July 2012. Whilst the software change may be minor, this does not guarantee that:

- the necessary changes will be made on time by the software providers;
- current software users will update their software to the new compliant version (they will be required to pay for the upgrade);
- those entities not currently caught by the Fair Work Regulation's requirements will be aware of the new requirement and able to implement the necessary changes within the required timeframe;
- those employers with in-house custom payroll systems will identify the need to change and implement a solution in the required time frame

Additionally, due to differing legislative requirements on the payment of contributions, for some employers the system change may need to accommodate for three expected payment dates: one each for superannuation guarantee contributions, salary sacrifice/additional employer contributions and personal contributions deducted from salary.

To address the system/software change issues, ASFA sees a need for an educative compliance approach by the Fair Work Ombudsman for at least the first six months of operation of the new provisions.

On a final matter on reporting superannuation contributions on payslips, we note that there will be some employees, such as those on an overseas secondment and subject to the provisions of an international social security agreement, who will be entitled to SG contributions but will not be notified under these provisions as they will not receive a pay slip from their Australian employer.

On a separate but related issue, the explanatory memorandum at paragraph 5 of chapter 2 sets out the Government's intention to legislate for certain superannuation entities to provide members with information about the receipt of contributions. ASFA requests that, in developing the precise notification requirements, consideration be given to those funds that have developed an electronic interface which permits members to securely access up to date details on contributions made to their account. ASFA would argue that the provision of a web based portal for all members that shows all transactions, including SG contributions, is consistent with the Government's philosophy on electronic commerce. As such, strong consideration should be given to ensuring that funds with such a facility, having notified members of its availability in the context of the protecting super proposals, should not be required to provide separate notification to members.

Comments on the exposure draft legislation

Item 1

Item 1 enlarges the objects of the Act through the insertion of the word 'main' in subsection 3(1). This change is considered significant enough to warrant the inclusion of a special note in the explanatory memorandum about the interpretation of section 3(3) of the Act stating that 'this means...' and later 'It is not meant to

Given the perceived need for this explanation, ASFA requests that consideration be given to either amending the wording of subsection 3(3) of the Act or including a note to the provision so as to assist interpretation and to provide clarity to its operation.

Item 7

New section 336JA

This provision sets out the circumstances that must exist for the requirement to provide information about superannuation on payslips to apply.

336JA(1)(c) specifies one condition as 'the contribution relates to the salary or wages mentioned in the pay slip'.

ASFA notes that the list of circumstances does not include the payment of a superannuation contribution during the pay period but which relates to salary or wages mentioned in another pay slip – the proposed reporting obligation from 1 July 2013 – and questions why the opportunity has not been taken to include the requirement in this Bill.

We also note that the phased introduction of the new TFN rules on 1 July 2011 and 1 January 2012 was achieved within a single Bill through the use of differing commencement dates. ASFA considers that as the actual reporting obligation from specific dates will be prescribed in regulations this would facilitate the inclusion of the July 2013 requirements in the legislation at this point in time. That is, the inclusion of the additional information item in the legislation would not necessarily lock the Government into introducing the change to the reporting requirement should further consultation result in the Government not proceeding with the proposed 1 July 2013 reporting requirement.

New section 336JD

This provision assigns to the Fair work ombudsman the task of monitoring and enforcing compliance with the legislation. ASFA has some concerns that an employee will be still be required to deal with three regulators over the matter of superannuation contributions (the Fair Work Ombudsman for payslip matters, the Commissioner of Taxation where non-payment of Superannuation Guarantee (SG) is at issue and the Australian Prudential Regulation Authority where non payment of personal or non-SG employer contributions is at issue).

New section 336JF

This provision sets out an alternative constitutional basis for the legislation.

ASFA notes that a successful challenge to the constitutionality of the provisions would limit the application of the provisions to a restricted arrangement of employers. ASFA considers that a successful challenge would be an unfortunate outcome for many employees.

Comments on the exposure draft explanatory memorandum

General outline and financial impact

Superannuation- employers must report the date on which they expect to make superannuation contributions

This section states that the regulations will require employers to report 'the amount of superannuation contributions, as well as the date on which the employer expects to pay them'.

ASFA requests that this be expanded to include the Fair Work Regulations 2009 Regulation 3.46(2) requirement to include on the pay slip the name, or name and number, of any fund to which the contribution is to be (or was) paid. ASFA considers this information essential and seeks confirmation, through inclusion in the explanatory statement, of the intention to include this requirement in the regulations.

ASFA also considers that including this requirement is consistent with the statement on page 7 (Summary of law, 1.1 second dot point) that the current Fair Work Regulations with respect to accrued contributions will be transferred to the SIS Regulations, along with the 'expected date' requirement.

Compliance cost impact.

The statement on the compliance cost impact has not recognised that many employers will be required to purchase upgraded payroll software, that employers not previously caught by the Fair Work requirement may need to purchase or develop compliant software and that employers with proprietary software will be required to update such software.

Chapter 2

Outline of chapter

For clarity, the first dot should be expanded to include the current Fair Work requirement for an employer to report 'the name, or the name and number, of any fund to which the contributions will be made'.

Detailed explanation of new law

Throughout this section of the explanatory memorandum reference is made to sections of the Bill. For example 1.2 commences 'Section 1 of the Bill enlarges ..'. Should these references be to items in the schedule (e.g. should 1.2 commence 'Item 1 of Schedule ?? of the Bill enlarges on ' ?).

Paragraph 1.8 states, in the dot point, that 'Technically employers are not obliged to make superannuation guarantee contributions and can choose instead to pay the superannuation guarantee charge, ...' as a means of explaining the use of the word 'can' in new section 336JA(1).

ASFA suggests that this statement be reworded as it implies that the superannuation guarantee charge liability only arises where an employer chooses to not make the superannuation contributions. It is ASFA's views that all employers that are subject to the Superannuation Guarantee Charge Act have a superannuation guarantee charge liability. However, through the operation of the Superannuation Guarantee (Administration) Act, they may reduce the amount of charge payable, including to nil, by making contributions to a complying superannuation fund in respect of an employee subject to the act. Perhaps wording as follows would be more appropriate:

Technically, employers are subject to the non tax-deductible superannuation guarantee charge. However most reduce the charge payable by choosing to instead make superannuation contributions for their employees. The measure therefore uses the word 'can' so as to require employers who are only subject to the Superannuation Guarantee Charge Act and who choose instead to make contributions to a superannuation fund to report these contributions on payslips.

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If you have any queries or comments regarding the contents of our submission, please contact our principal policy adviser, Robert Hodge on (02) 8079 - 0806 or via e-mail to rhodge@superannuation.asn.au.

Yours sincerely
Margaret Stewart



General Manager, Policy and Industry Practice