

# Submission to

## The Australian Government Treasury

### Superannuation Guarantee Integrity Package

February, 2018

<b>Contents</b>	<b>Page</b>
Introduction .....	3
Superannuation Guarantee non-compliance .....	3
Single touch payroll.....	5
Women In Super <i>Make Super Fair Campaign</i> .....	5
Recommendations .....	6
References .....	7

## Introduction

The Queensland Nurses and Midwives' Union (QNMU) thanks the Australian Government Treasury (Treasury) for the opportunity to provide feedback to the *Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018* (the bill).

Nursing and midwifery is the largest occupational group in Queensland Health and one of the largest across the Queensland government. The QNMU is the principal health union in Queensland covering all classifications of workers that make up the nursing workforce including registered nurses (RN), registered midwives (RM), enrolled nurses (EN) and assistants in nursing (AIN) who are employed in the public, private and not-for-profit health sectors including aged care.

Our more than 57,000 members work across a variety of settings from single person operations to large health and non-health institutions, and in a full range of classifications from entry level trainees to senior management. The vast majority of nurses and midwives in Queensland are members of the QNMU.

Nursing and midwifery are distinctly feminised professions where around 90% are women. Superannuation continues to be an area of concern for women and is of great importance to nursing and midwifery. Women face unique challenges when it comes to retirement savings. Lower pay, time out of the workforce to raise children, caring for elders, running a single-parent household, illness and divorce are some of the many hurdles they often face throughout their lives. Superannuation is system of deferred wages. It is particularly important women and indeed all workers receive their full superannuation entitlements in order to have an adequate income in retirement.

## Superannuation Guarantee Non-Compliance

The QNMU welcomes the measures introduced through the bill. The amendments empower the Commissioner of Taxation to issue a direction to an employer to:

- undertake an approved course where that employer has failed to comply with their superannuation guarantee (SG) obligations under the *Superannuation Guarantee (Administration) Act 1992* (SGAA) or their obligations under the *Taxation Administration Act 1953* as it relates to the SGAA 1992. An employer's failure to comply with the direction can result in administrative and/or criminal penalties;
- pay an outstanding superannuation guarantee liability or an estimate of the liability within a specified period. An employer's failure to comply with the direction can result in criminal penalties.

In 2016, Industry Super Australia (ISA) used detailed ATO data to estimate the underpayment of SG by employers and sham contractors to be at least \$2.8 billion in 2013-14 affecting around 2.15 million workers underpaid on average \$1300 (ISA, 2016). In March 2017, this estimate increased to \$5.6 billion (affecting an estimated 3 million employees).<sup>1</sup> Using Tria's projections and its own, ISA estimated that unless action is taken, unpaid superannuation will amount to over \$66 billion by 2024 including lost earnings.<sup>2</sup>

Using the legal definition and the 8.5% of ordinary time wages as the cutoff rather than the statutory rate of 9.25% in 2013-14, ISA (2016) found males had an apparent underpayment proportion of 29% and females 24%. ISA believes the gender difference may be because males are more likely to work in construction occupations and as consultants – two areas of known underpayment. The adjustment of part-time wages for overtime could be a factor decreasing the apparent female rate.

According to ISA (2016, Appendix 1, p. 15), if the moral definition of SG contributions had been used (not counting salary sacrifice) then 32% of males and 27% of females would have contributions less than 8.5% of ordinary time wages. As the cutoff is set closer to the statutory SG threshold females are slightly more likely to be underpaid – suggesting females are more likely to be shortchanged rather than not be paid at all.

While the incidence of non-compliance may be small relative to the \$89.6 billion total employer contributions made in 2015-6, it has a very personal impact on affected employees. It reduces their retirement income and diminishes community confidence in the system overall (Superannuation Guarantee Cross Agency Working Group, 2017, p. 18).

Younger workers, low-income earners and workers in the construction, hospitality and cleaning industries are most likely to miss out on superannuation (ISA, 2016). The Productivity Commission has also noted unpaid SG contributions and lost accounts can have a material impact on member balances and particularly affect those with low incomes, irregular work patterns or low financial literacy (Productivity Commission, 2016)

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<sup>1</sup> The Superannuation Guarantee Cross Agency Working Group (2017) claimed this could be an overstatement. In its view, the estimate should be considered in the context of the \$89.6 billion in total employer contributions made in 2015-16 which has progressively grown from about \$62 billion in 2006-07.

<sup>2</sup> According to ISA these estimates are conservative - using a compliance benchmark of 8.5% of assessable income rather than the statutory rate of 9.25% in 2013-14. If these estimates took into account a loophole that allows employers to count employees' voluntary contributions, via salary sacrifice, towards their SG obligations, the amount would be greater. Regardless of whether or not the estimates are overstated or conservative, the prevalence and amount of unpaid super remains a problem.

In a review of Australian Tax Office (ATO) case data, the Superannuation Guarantee Cross Agency Working Group (2017) found small businesses account for around 70 per cent of reported superannuation guarantee non-compliance. Cash flow problems are the major reason small business employers provide for not paying employees' superannuation guarantee contributions.

The ATO advises that as a result of its compliance actions some \$2 billion has been transferred by the ATO to employees' superannuation funds since 2010. However, only 48 per cent of the total superannuation guarantee charge raised against non-compliant employers is collected by the ATO, often because the employer is insolvent (Superannuation Guarantee Cross Agency Working Group, 2017).

### **Single touch payroll**

In our view, improving the ATO's ability to obtain real time information about an employer's compliance with their super obligations is an important step forward. Extending Single Touch Payroll to all employers from 1 July 2019, will shift the burden of monitoring superannuation compliance from individual workers to the ATO by providing the ATO with more timely and accurate information to detect and prevent non-payment of superannuation.

It will also benefit employees as it is envisaged the information will become more visible and accessible through key 'intervention' points (for example, pop-up text that people will see when they are completing their income tax returns) and behavioural insights to 'nudge' people to engage if there is a possible shortfall (Superannuation Guarantee Cross Agency Working Group, 2017, p.23)

### **Women In Super *Make Super Fair Campaign***

The QNMU would like to also place on the record our support for the *Make Super Fair* campaign being run by Women in Super (WIS). The five point plan from this campaign is as follows:

1. Providing an additional annual \$1,000 government contribution into superannuation for low income earners, to better support those with inadequate retirement savings;
2. No further delay to scheduled SG increases to raise it to 12%;
3. Paying the SG on the government Paid Parental Leave scheme;
4. Removing the \$450 monthly income threshold on SG contributions to include those with intermittent, casual and insecure employment in the super system;

5. Ongoing tracking of the gender superannuation gap and publication of a gender impact statement for any changes to age pension or retirement income policy.

We have incorporated these elements in our recommendations below.

## Recommendations

The QNMU recommends:

- The parliament passes the bill.

The QNMU also recommends:

- Properly resourcing the ATO in order to rigorously monitor and enforce these provisions so employers who abrogate their responsibilities to their employees are held to account;
- Requesting the ATO to analyse and assess the gender effects of these policy changes;
- Aligning superannuation payment with pay slip reporting cycles;
- Providing an additional annual \$1,000 government contribution into superannuation for low income earners, to better support those with inadequate retirement savings;
- No further delay to scheduled superannuation guarantee (SG) increases to raise it to 12%;
- Paying the SG on the government Paid Parental Leave scheme;
- Removing the \$450 monthly income threshold on SG contributions to include those with intermittent, casual and insecure employment in the super system;
- Ongoing tracking of the gender superannuation gap and publication of a gender impact statement for any changes to age pension or retirement income policy;
- Closing the loophole that allows employers to count salary sacrifice amounts towards their SG obligations;
- Introducing an enforceable mechanism for superannuation funds to recover unpaid SG from employers on behalf of members;
- Including unpaid employer superannuation contributions in the Fair Entitlements Guarantee scheme for workers who lose their job due to the liquidation or bankruptcy of their employer.

## References

Productivity Commission (2016) *How to Assess the Competitiveness and Efficiency of the Superannuation System Research Report* retrieved from <http://www.pc.gov.au/inquiries/current/superannuation/competitiveness-efficiency/report/superannuation-competitiveness-efficiency.pdf>

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