

Ai GROUP SUBMISSION

The Treasury

Superannuation Guarantee Integrity Package

*Exposure Draft – Treasury Laws
Amendment (Taxation and
Superannuation Guarantee Integrity
Measures) Bill 2018*

16 February 2018



About Australian Industry Group

The Australian Industry Group (Ai Group) is a peak industry association in Australia which along with its affiliates represents the interests of more than 60,000 businesses in an expanding range of sectors including: manufacturing, construction, engineering, automotive, food, transport, information technology, telecommunications, call centres, labour hire, printing, defence, mining equipment and supplies, airlines, health, community services and other industries. The businesses which we represent employ more than one million people. Ai Group members operate small, medium and large businesses across a range of industries. Ai Group is closely affiliated with many other employer groups and directly manages a number of those organisations.

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Ai Group position on the Exposure Draft

This submission provides the Australian Industry Group’s (Ai Group’s) response to the *Exposure Draft – Treasury Laws Amendment (Taxation and Superannuation Guarantee Integrity Measures) Bill 2018 (Exposure Draft Bill)* which is intended to give effect to the Government’s Superannuation Guarantee (SG) Integrity Package.

The 21-day deadline in s.296-10(3)(c)

The 21-day period in s.296-10(3)(c) is much too short, given the harsh consequences of not meeting the deadline (see s.296(15)(1)).

The interaction between the SG legislation, awards, enterprise agreements and contracts of employment can be extremely complex, as is evident from *Superannuation Guarantee Ruling SGR 2009/2 – Meaning of the terms ‘ordinary time earnings’ and ‘salary or wages’*. On a number of occasions Ai Group and our Members have disagreed with the ATO’s interpretation of the SG legislation and we have ultimately been proven to be correct as a result of either Court proceedings or an application to the ATO for an initial ATO determination to be reviewed.

The 21-day period in s.296-10(3)(c) is an inadequate and unfair period of time for an employer to receive the notice, understand the contents of the notice, obtain legal advice and potentially organise the funds to pay the SG Charge; particularly given the harsh penalties associated with non-compliance.

Also, the 21-day period in s.296-10(3)(c) is an inadequate and unfair period of time for an employer to obtain legal advice and lodge a taxation objection (see s.296-35(1)(b)) if the employer disagrees with the ATO’s calculation of the SG Charge owing.

Under the Exposure Draft Bill, employers are exposed to a very substantial loss of rights if the 21-day period is not met. To reduce the potential for harsh and unfair impacts upon employers, the 21-day period should be extended to at least 90 days.

Criminal penalties

Ai Group is opposed to the criminal penalties in the legislation.

Exposing employers to criminal penalties for underpaying employee entitlements deters investment in small businesses. Many potential proprietors would take the view that it is less risky for them to invest money in property or shares, rather than establishing a business and employing people, and becoming exposed to criminal penalties if they fail to fully understand the terms of complex legislation which interacts with lengthy industry and occupational awards. Substantial civil penalties are appropriate, but not criminal penalties.

The substantial civil penalty in the Exposure Draft Bill of 50 penalty units would provide an appropriate deterrent to employers who fail to comply with an ATO direction to pay the SG Charge.



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