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SUPERANNUATION: PAYSLIP REPORTING

SUMMARY OF CONSULTATION PROCESS

The Government announced on 25 July 2010 that it would require employers to provide more information on their payslips about when they will make their superannuation contributions.

This measure was included in the Tax and Superannuation Laws Amendment Bill (2012 Measures No.1), schedule 6, which was introduced into Parliament on 29 February 2012. The measure mainly created a regulation making power, and the regulations had not yet been drafted.

Consultation process

Targeted consultation with key stakeholders on the measure was conducted between February 2011 and June 2011 as part of the Stronger Super Consultation Panel.

Consultation on the [draft legislation](#) was conducted electronically between Tuesday 14 February 2012 and Monday 20 February 2012. Eleven submissions were received.

Submissions can be viewed on the [Treasury website](#).

Summary of key issues

The Stronger Super Consultation Panel

The payslip measure was originally announced in slightly different form during the 2010 election. As originally announced, employers were to be required to report superannuation contributions, on payslips, when they were *actually* made during the pay period. Members of the consultation panel were concerned that:

- employers would have required software changes which would be relatively expensive; and
- employees might be confused by receiving payslip reports of both accrued and actual contributions, since these would often not overlap.

For these reasons, the consultation panel recommended that employers should have to report a date by which they *expect* to have made their contributions.

The Government is consulting further on the issues raised above, and has announced that from 1 July 2013, subject to there being no significant payroll system costs, payslip reporting of *actual* contributions paid (rather than just accrued contributions) will commence. In the meantime, it is proceeding with the consultation panel's recommendation for employers to report the date by which they *expect* to make their contributions.



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The exposure draft

Various bodies commented on the exposure draft, saying that:

- They could not comment finally until they had seen the regulations.
- The measure either will or will not be effective or cost-effective.
- The Government should instead rely on superannuation funds to notify employees about contributions regularly. (Answer: The Government will require fund notification in addition to payslip reporting. The two measures are complementary.)
- Employers may have to deal with up to three regulators: the Fair Work Ombudsman, the ATO and APRA. (Answer: they already do.)
- Software providers will not be able to update software in time for the 1 July 2012 start date, and would prefer a 1 January 2013 start date because they have other changes to make for the end of the financial year. (This will be considered further when drafting the regulations. There will be no actual requirement for employers to report until the regulations are made, and they may specify a later date of effect if necessary.)
- The proposal for payslips to report *actual* contributions from 1 July 2013 will be ‘much more difficult’ for software suppliers, and expensive.
- Employers should be allowed to report a general date, for instance the 28th day after the end of the quarter, rather than specific dates which might change from pay period to pay period, and from employee to employee. (This will be considered further when drafting the regulations.)
 - One body suggested that employers should be allowed to report such a date for all employees where it would be true for at least 95 per cent of employees. (This would presumably help employers in cases where part of a superannuation entitlement was not due to be paid until after the 28th day. However, it is not clear that this would supply employees with useful information, and the Government instead proposes to require separate reporting where superannuation contributions fall into separate categories — see below.)
- The Explanatory Memorandum needed to clarify the following matters (which have since be changed in the final versions of the Explanatory Memorandum and the Bill):
 - The measure covers all superannuation contributions, and not just superannuation guarantee contributions.
 - The date concerned is the date on which the employer forwards the contribution to the fund, not the date on which the fund allocates the contribution to the employee’s account.



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- The Government proposes to consider further whether to require employers to report *actual* contributions from 1 July 2013.
- Employees covered by the referral of powers from the States are subject to the existing payslip reporting requirements under the Fair Work legislation.
- That the Explanatory Memorandum needs to answer the following questions:
 - What happens if the employer does not make the contribution on the date nominated? (Answer: there is no new penalty, but employers will have to deal with enquiries from employees.)
 - What happens if the employer plans to pay the SG charge instead of making an SG contributions. (Answer: they will probably be required to report a contribution of \$0 and an expected date of 'n.a.' (not applicable).)
 - Which Constitutional heads of power undergird the measure. (Answer: the Corporations power and the Pensions power.)
- That some technical changes to the draft legislation are needed, including that:
 - The functions of the Fair Work Ombudsman should be extended to include reporting on compliance. (Answer: this is covered by the existing provisions.)
 - Section 4 of the SIS Act should list the new Part inserted by the legislation. (We have done this.)
 - The legislation jumps from 336F to 336J. (This is intentional, since it leaves room for possible future insertions.)
 - The measure excludes employees who are not already covered by a payslip requirement under the FW Act or under State legislation. (This is true, but the number is likely to be very small. We do not want to impose payslip requirements, as such, on employers who do not already issue them.)

Some submissions suggested changes to the Explanatory Memorandum which we have not adopted, including that:

- The Explanatory Memorandum should note that regulations may also prescribe further and increased information requirements as software develops. (Answer: there are no proposals to introduce such changes, other than the possible reporting of *actual* contributions.)
- The Explanatory Memorandum should commit the Government to a post-implementation review of the measure. (Answer: the measure was subject to a Regulation Impact Statement, and there are no current plans for further review.)



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Various bodies made suggestions which Treasury will consider in drafting the regulations, including that:

- The regulations should explain what happens when employees unexpectedly earn more than \$450 in a month, and therefore become eligible for superannuation guarantee contributions on an earlier pay period. (Answer: the employer should report the contribution in the later pay period, when it arises.)
- The regulations should clarify which contributions 'relate' to salary and wages paid during a pay period.
 - One submission was concerned that a payslip might report payments to the employee which are not in the nature of salary or wages. However, we are not asking the payslip to specify the relation between the salary or wages and the superannuation contribution. Only if there is in fact such a relation (broadly conceived) does the obligation arise.
 - One submission was concerned that an employee might salary sacrifice all of his or her wages, and therefore leave no salary or wages for the contribution to 'relate' to. The regulations will make it clear that such contributions are nonetheless to be reported.
 - One submission was concerned that an employee might salary sacrifice a 'bonus' which did not form part of their salary and wages.
 - One submission suggested that there would be a problem if an employee had more than one type of contribution: for instance, superannuation guarantee and other mandatory contributions, salary sacrifice contributions, and voluntary after-tax contributions. The regulations may require payslips to report separately against each kind of contribution.
- When the operative regulations are transferred from the Fair Work Regulations to the Superannuation Industry Supervision Regulations, the former should contain a note outlining the new requirements in the latter (so that most readers do not need to open the latter).
- The drafting of the measure could be clarified, technically.

Some submissions made suggestions which we have not taken up, including that:

- The definition of 'Regulator' in the SIS Act be widened to include the Fair Work Ombudsman. (We do not believe this is necessary, because under the measure the Fair Work Ombudsman is empowered to use his existing powers under the Fair Work Act.)
- We should make provision for employees on overseas secondment. (The numbers are small, and it is not clear how we could require an overseas employer to comply with our payslip provisions.)

Some submissions commented on other issues, in particular that:



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- Funds which have a web-based portal for members should not have to issue quarterly or six-monthly notices to members. (The notices do, however, serve a useful purpose in reminding employees to check.)
- Reporting of *actual* contributions is likely to be very expensive.

Feedback

Feedback on the consultation process for this measure can be forwarded to consultation@treasury.gov.au . Alternatively, you can contact Erica Lejins on 02 6263 2995.

Thank you to all participants in the consultation process.