

2/04/2025

Department of Employment and Workplace Relations (DEWR)

FEGPolicy@dewr.gov.au

Delivered online via consultation hub

Dear Department of Employment and Workplace Relations,

Addressing corporate misuse of the Fair Entitlements Guarantee

AustralianSuper welcomes the opportunity to provide a submission to the Addressing corporate misuse of the Fair Entitlements Guarantee (FEG) Discussion Paper.

AustralianSuper is Australia's largest superannuation fund and is run only to benefit members. Over 3.5 million Australians are members of AustralianSuper, and we invest over \$365 billion of their retirement savings on their behalf. Our purpose is to help members achieve their best financial position in retirement.

Our submission therefore focuses on our support for the inclusion of 'superannuation guarantee charge' to the list of employee entitlements at section 596AA of the *Corporations Act 2001*.

Details are set out in the Attachment to this submission.

We would be pleased to provide additional information or to discuss this submission in further detail. If that would be of assistance, please do not hesitate to contact me at **ncoates@australiansuper.com**.

Yours sincerely



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Attachment: Key issues

The ongoing cost of unpaid superannuation

The ongoing cost of unpaid superannuation is a significant issue. Unpaid or underpaid superannuation is not a one-time loss; it has compounding impacts. The savings in a member's superannuation account today have the potential to benefit from compound returns. This means any returns earned on the balance are reinvested, allowing the savings to continue to grow until retirement. Any money that is not in the account misses the opportunity to grow, and if an employer is not paying or is underpaying superannuation, members could miss out on maximising their returns for the future.

Low-income workers, including young people in casual employment, women in low-paid industries, and migrant or newly arrived workers, are more likely to have unpaid super – which robs them of crucial retirement savings and compound returns.

While we recognise that not all unpaid super is due to corporate insolvency, the Super Members Council has calculated that:¹

- in one year, 2.8 million Australians missed out on \$5.1 billion in legal super entitlements (2021-22);
- over 9 years, Australians missed out on \$41.6 billion;
- the average affected worker missed out on \$1,800 in super in a year – which can mean more than \$30,000 less in retirement savings for a typical worker; and
- the problem is getting worse with Australians losing more money at a higher average.

Support for reforms to better protect employee entitlements in insolvency

AustralianSuper supports the proposed reforms designed to address misuse of FEG through sharp corporate practices that seek to prevent, avoid or reduce a company's liabilities (including in respect of employee entitlements). We support DEWR's proposal to add 'superannuation guarantee charge' to the list of employee entitlements at section 596AA of the *Corporations Act 2001*.

Further reform of employment entitlements under the Fair Entitlements Guarantee

Further to the reform proposed in this consultation, AustralianSuper recommends that unpaid superannuation guarantee (SG) entitlements be included in the definition of unpaid 'employment entitlements' for the purposes of the FEG.

Compulsory superannuation contributions are part of an employee's remuneration and are vital for achieving dignity in retirement.

Insolvency is a leading cause of unpaid super and total amounts of unpaid super due to insolvencies can be significantly higher than unpaid wages.² Extending the Fair Entitlements Guarantee to cover unpaid super

¹ Super Members Council, **Fixing unpaid super will make the system fairer for workers and employers alike | SMC Australia**, 27 August 2024.

² ASIC, **Insolvency statistics: External administrators' reports July 2018-June 2019**, December 2019, p 45. While this data is from 2019 and ASIC no longer publishes this report, we have not seen evidence that this changed.

would be consistent with the treatment of other employee entitlements. This change would also be consistent with the findings of the Superbad inquiry,³ which recommended that the Government undertake an assessment of the fiscal and legislative impacts of expanding the Fair Entitlements Guarantee to cover unpaid super.

Unpaid superannuation should be considered the same as unpaid wages for FEG purposes, as both are ultimately employee remuneration.

³ Senate Economics References Committee, **Superbad – Wage theft and non-compliance of the Superannuation Guarantee**, 2 May 2017.