



AUSTRALIAN CHAMBER OF  
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23 October 2014

The Manager  
Benefit and Regulations Unit  
Personal and Retirement Income Division, Treasury  
Langton Crescent  
Parkes ACT 2600

Email: <mailto:superannuation@treasury.gov.au>

Dear Sir/Madam,

RE: Treasury Legislation Amendment (Repeal Day) Bill 2014

Treasury released an exposure draft of the proposed *Treasury Legislation Amendment (Repeal Day) Bill 2014 (draft bill)* which intends red tape reduction amendments to a range of statutes within Treasury's portfolio. The Australian Chamber of Commerce and Industry (**ACCI**) supports the efforts to remove unnecessary red tape and it welcomes the opportunity to comment on this exposure draft legislation. ACCI thanks the Treasury for making it available.

ACCI has a close interest in the superannuation system and superannuation-derived obligations on employers under guarantee and workplace relations legislation. ACCI's interest is confined to employers' interests including consequences for employees arising from guarantee legislation because of their knock-on to employers.

This submission is confined to Schedule 1 of the draft bill which proposes to amend the *Superannuation Industry (Supervision) Act 1993 (SIS Act)* by repealing Part 29B, *Employers to give information about superannuation contributions* and its associated definitional provisions (**Part 29B**).

A number of public comments about this proposed repeal appear based on a misunderstanding of the current legislation and its proposed repeal. The proposed repeal of Part 29B would remove no employee protection, nor alter the information which employees are entitled to receive about contributions made by their employers on their behalf.

### 1. Employers have an obligation to report superannuation contributions

With one minor exception, private sector employers in Australia are covered by the *Fair Work Act 2009 (FW Act)* (as are many public sector employers as well). The minor exception in the private sector is those private sector employers in Western Australia which are not constitutional corporations. These latter employers are subject to Western Australian workplace relations law.



Part 3-6 of the FW Act requires an employer to both keep prescribed records [s 535] and issue pay slips within a day of paying an employee in relation to the performance of work [s 536]. Regulation 3.37, *Records – superannuation contributions*, of the *Fair Work Regulations 2009* prescribes the records about superannuation contributions which must be kept and reg 3.46, *Pay slips – content*, prescribes what must be included on the employee’s pay slip.

Regulation 3.46(1)(c) requires the pay slip to specify the period to which the pay slip refers and reg 3.46(5) provides that if the employer is required to make superannuation contributions for the benefit of an employee the employee’s pay slip must include details about either the amount of contributions made during the period (covered by the pay slip) or the amount of contribution which is required to be made (ie., which has accrued) during the period of the pay slip. As well as the amount of the contribution, the fund’s name and number is to be reported.

These regulations have applied since 1 July 2009 and are relevantly similar to regulations made under the predecessor *Workplace Relations Act 1996*. They were and are unaffected by either the making or the repeal of Part 29B.

## **2. The history of Part 29B**

Part 29B, which includes the sections 336J – 336JF, was inserted into the SIS Act by Part 1 of Schedule 6 of the *Tax and Superannuation Laws Amendment (2012 Measures No. 1) Act 2012* with effect from 27 June 2012.

The obligations under s 336JA are triggered by the employer’s obligation to give a pay slip. Section 336JA requires employers to give the pay slip information about contributions which is prescribed in the regulations (that is, the regulations made under the SIS Act). Breach of s 336A obligations is made an offense under the FW Act and the Part 29B penalties and enforcement procedures, and the coverage of enforcement powers, link back to those in the FW Act. Part 29B also inserted a new s 6(1)(h) into the SIS Act giving administration of Part 29B to the Fair Work Ombudsman (**FWO**). The FWO administers ss 535 and 536 and the regulations of the FW Act.

Enabling regulations for s 336JA, that is, the prescribed information to be included on the pay slip, have not been made. The regulations were not made by the former government and have not been made by this government. The former government’s decision to not make regulations was not a decision by oversight, it followed extensive consultation about them.

## **3. What does Part 29B do?**

Part 29B has no practical effect. Repeal maintains the status quo.

## **4. Why not leave Part 29B alone?**

It might be asked that if Part 29B has no effect why should it not be left to stand?

Apart from the fact that it is not good policy nor good regulation to leave redundant legislation or regulation on the statute books, there are good reasons to repeal Part 29B. Standing redundant (or superseded) legislation makes it more difficult to understand the content of the regulation of the relevant subject matter. It makes it more likely that a citizen must seek help to understand or undertakes unnecessary compliance activity.

It is clear from some of the public comment that Part 29B is not well understood and that the fact that Part 29B has no effect, imposes no obligations, and gives effect to no right to information (and provides no protection) is clearly not universally known. The fact that

Part 29B is seen to be operating legislation obscures the actual requirements which do apply to these obligations and their source. This serves to confuse employers about their compliance obligations and employees about their informational rights.

ACCI thanks the Treasury for the opportunity to comment on the draft bill. It supports schedule 1.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "Dick Grozier". The signature is written in a cursive, slightly slanted style.

**Dick Grozier**

Associate Director Workplace Relations