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Superannuation Guarantee Legislation Amendment (Simplification) Bill 2015

1 July 2015 - 30 June 2016

Australian
Chamber of Commerce
and Industry

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and Industry

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Australian Chamber of Commerce and Industry

Summary of Recommendations

The superannuation guarantee charge is essentially a tax, albeit one intended to encourage employers to make superannuation guarantee contributions on behalf of eligible employees rather than paying the tax. For a number of reasons this arrangement does not give rise to a simple or effective compliance regime, and nor does it give rise to simple legislation. There is too much outstanding unpaid contribution and a significant proportion of unpaid contribution which is identified each year is unrecoverable. An unpaid contribution is a direct loss to the member but it is also a loss to the overall national retirement system.

A number of factors contribute to this state of affairs. These include the time taken for missed contributions to become visible, which seems likely to be reasonably addressed in the medium term by real time reporting, the complexity of the SG charge itself, and the dysfunctional penalty structure associated with the SG charge. None of this is assisted by the structure of the *Superannuation Guarantee (Administration) Act 1992*, which is structured around the idea of establishing the tax, making it unpleasant, and then with quite complex provisions providing a way out.

A SG charge arises when a complying contribution is not made by the due date. Identifying the SG charge basically relies on employer self-reporting. Where the Commissioner investigates a suspected failure to report, there is discretion as to penalty. Where the employer self-reports the existence of the SG charge, there is no discretion as to penalty. The whole charge must be paid and, although the member receives the collected charge as a contribution into his/her fund, for the employer a properly paid SG charge is not treated as a contribution.

The longer contributions remain unpaid the greater the likelihood that they will not be. One important factor discouraging late payment of a contribution, or payment of the SG charge the missed contribution creates, is that the penalty regime imposes an excessive and arbitrary cost on re-joining the system. The consequences are that many small businesses sit outside the system with unpaid contributions which they are unable to remedy. They simply cannot afford to.

The *Superannuation Guarantee Legislation Amendment (Simplification) Bill 2015* goes some distance to addressing these issues. It is clearly intended to be light touch, amending no more than is necessary, and it is elegant in its minimalism.

The Australian Chamber of Commerce and Industry welcomes the exposure draft and is supportive of the amendments, but more could be done. Its submission identifies a number of areas where this might occur, but its recommendations are directed to the exposure draft and reflect the Chamber's understanding that the Bill is not seeking to significantly restructure the act. They are aimed at improving clarity.

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Recommendation 1: Part 1 – Salary or wages

Consideration could be given to recaptioning the heading of Part 1 of the Bill to "salary or wages" which is consistent with the subject matter of Part 3 SG(A) Act.

Recommendation 2: Retention of salary or wages

Consideration might be given to redrafting the Bill to do away with the need for the concept of "salary or wages" in the SG(A) Act, or, failing that, investigating the need to retain "salary or wages" with a view to a future amendment of the SG(A) Act.

Recommendation 3: Clarifying the effect of the new ordinary time earnings definition

Consideration could be given to clarifying that the new definition of "ordinary time earnings" in the Bill is not intended to alter its meaning.

Recommendation 4: Clarifying the relationship between timely contributions and potential shortfalls

Consideration could be given to simplifying the provisions dealing with the calculation of actual individual shortfall more comprehensively, or failing that, to including a note under s 19(1) to the effect that, for contributions to complying funds (ie., which are not defined benefit schemes) timely payment of the calculated amount avoids the SG charge, and directing attention to s 23 SG(A) Act.

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1 Introduction

On 21 August the Treasury released a discussion draft bill, the *Superannuation Guarantee Legislation Amendment (Simplification) Bill 2015* (**Bill**) and associated explanatory material. The Bill gives effect to changes advised in the 2014 MYEFO[1] and the subsequent announcement by the Assistant Treasurer and the Minister for Small Business on 20 January 2015. The Government also released the report of the Board of Taxation, *Tax Impediments Facing Small Business*, and its responses to the Board's recommendations. The Board's report dealt with matters addressed in the Bill.

Currently under the *Superannuation Guarantee (Administration) Act 1992* (**SG(A) Act**), employers must make quarterly superannuation guarantee contributions for their eligible employees equal to at least 9.5% of the employee's Ordinary Time Earnings (**OTE**), consistent with choice to a complying fund, or declare and pay a superannuation guarantee charge (**SG charge**) to the Australian Taxation Office. The SG charge comprises 9.5% of the employee's salary or wages (**SoW**), a $20 administrative fee and "nominal interest" accruing from the beginning of the quarter the shortfall is associated with until either the last date for timely payment (5 months later) or when the shortfall is actually paid.

Failure to declare a shortfall in time can attract a penalty under the SG(A) Act of up to an additional 200% of the SG charge. Failure is also subject to an administrative penalty under the *Tax Administration Act 1953* (**TA Act**).

Under the Bill, the SG charge will be simplified, and made more equitable, by making the earnings base for calculating the SG charge (currently total SoW) the same earnings base for calculating SG contributions (OTE). In other words, the SG charge would be based on the amount of outstanding contribution.[2]

Second, the Bill reduces the harshness of the SG charge by aligning the interest component on any SG shortfall with the actual period the contribution is outstanding. Third, the Bill removes the additional penalties under the SG(A) Act which will make "overdue" penalties consistent with the more generally applicable "overdue" taxation penalties under the TA Act.[3]

The Australian Chamber of Commerce and Industry (**the Australian Chamber**) welcomes the proposed legislation and thanks Treasury for the opportunity to comment.

1.1 The Australian Chamber's engagement with the superannuation system

The Australian Chamber has a long standing record of engagement with the superannuation system. Superannuation impacts every Australian employer. Employers have a strong interest all parts of the system being as efficient as they can be so that they do not impose unreasonable costs whilst underpinning the fundamental objectives of the system.

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[1] Pp 116-117 MYEFO, December 2014

[2] This was also a recommendation (Recommendation 5.3) by the Board of Taxation in its report, *Review of Tax Impediments Facing Small Business*, August 2014

[3] Also recommendation 5.4, *Review of Tax Impediments Facing Small Business*, August 2014

Employers and employees share a common interest in a regulatory system which supports and facilitates timely contributions as unobtrusively as possible.

1.2 The Australian Chamber's material interests in the superannuation system

As well as being a major cost of employment superannuation is a major component of the national financial system and the economy. Significant economic interests are at stake and these will be advanced and defended. It is not usual for proposed changes to any aspect of the superannuation system to be supported by all interests.

The Australian Chamber has no direct or material interest in any fund, or fund type, and it does not nominate to nor sit on any board of trustees.

The Australian Chamber's membership is primarily employer organisations, both state multi-industry chambers of commerce and industry and national industry specific organisations. Many Australian Chamber members, but not all, nominate directors onto trustee boards, and these will most likely be boards of industry or corporate funds.

Australian Chamber policy is developed so far as possible by consensus, but where that is not possible, by majority support. Members retain the right to advocate for their individual membership.

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2 The Bill – Part 1 – Salary and wages

Part 1 of the Bill is headed "Salary and wages". Although the terms "salary or wages" and "salary and wages" appear to be used almost interchangeably in the context of superannuation the Australian Chamber notes that the statutory term which is defined in the SG(A) Act and picked up by the *Superannuation Industry (Supervision) Act 1993* (**SI(S) Act**) is "salary or wages". There is something of an argument that Part 1 of the Bill should therefore be re-captioned.

Recommendation 1: Part 1 – Salary or wages

Consideration could be given to recaptioning the heading of Part 1 of the Bill to "salary or wages" which is consistent with the subject matter of Part 3 SG(A) Act.

Part 1 of the Bill proposes to base the calculation of (an individual) superannuation guarantee shortfall (**shortfall**) on the OTE of the employee concerned rather than, as at present, on that employee's SoW for the relevant quarter. This is consistent with the recommendation of the Board of Taxation in its August 2014 report:

> The Board recommends that the superannuation guarantee charge be calculated on the basis of OTE rather than salary and wages to align it with the way that superannuation contributions are calculated. […].[4]

A shortfall crystallises at the time that it is identified and paid, and this change means that the amount of outstanding contribution forms the base upon which the shortfall is calculated. The fact that the shortfall is based on the amount of unpaid contribution not only simplifies the calculation but is also equitable because it removes the windfall gains which occur when the shortfall calculation is based on SoW. An employee's SoW is unrelated to the amount of an employee's delayed contribution, but derives from the composition of the individual employee's non-excluded earnings over the quarter.

It is simply good law that a delayed payment of the same amount of contribution for two employees which is unpaid for the same amount of time should give rise to the same amount of shortfall. Law producing some other result is simply not good law. The Australian Chamber supports objective of Part 1 of the Bill.

2.1 Is there a simpler way?

However, despite the fact that under the changes proposed by the Bill both contribution and shortfall would be derived from an employee's OTE, not his or her SoW, the Part 1 amendments do

[4] Recommendation 5.3, p 47, *Review of tax impediments facing small business*, Board of Taxation, August 2014. This was formally accepted by the Government in its published response to the Board's report.

not delete the definition of SoW and continue to rely on the definition of "salary or wages" currently in the SG(A) Act. The effect of this may be that the Bill provides a light touch set of amendments to give effect to the new reliance on OTE, and in that sense the Bill is more simply drafted than it might otherwise be, but retaining SoW does not appear to assist with simplifying the SG(A) Act itself. Nor does the continuing reliance on SoW simplify the calculation of a shortfall to the extent possible.

The Australian Chamber believes that basing an individual shortfall on the employee's OTE presents an opportunity for more simplification than provided by the Bill.

2.2 The scheme of the SG(A) Act

In its current form the SG(A) Act is undeniably convoluted.

The SG(A) Act is intended to support timely contributions to complying superannuation funds on behalf of eligible employees which are consistent with choice. However the SG(A) Act is not structured to achieve this objective directly, and nor is timely payment of contributions an object of the SG(A) Act. Rather, the SG(A) Act establishes the amount of a superannuation tax (the SG charge) that an employer is to report and pay which is calculated from an employee's, or deemed employee's SoW.

S 19 SG(A) Act provides that each individual shortfall is determined from an employee's SoW and the prevailing charge percentage. "Salary or wages" is defined by s 11 SG(A) Act and comprises various types of payments to employees which are to be taxed. Certain payments to employees are excluded from SoW directly or by regulation (ss 11, 27 – 29 SG(A) Act). An employee's individual shortfall is subject to a ceiling, the maximum contribution base, which caps the amount of an employee's SoW which is to be used in calculating the tax (s 19(3) SG(A) Act).

S 17 SG(A) Act provides that the employer's shortfall is based on the total of each individual superannuation guarantee shortfall of the employer's employees for the quarter, together with nominal interest and an administration charge per employee and s 16 provides that the SG charge that the shortfall gives rise to (imposed as an amount equal to the employer's shortfall by the *Superannuation Guarantee Charge Act 1992*) is payable by the employer.

In summary the SG charge is determined from employee's SoW because this is the basis of individual shortfalls. The amount of shortfall can be reduced, and if there is none, the employer's obligation to report avoided, by an employer making sufficient timely contributions.

S23 SG(A) Act reduces the employer's obligation to pay the SG charge by the amount a complying contribution is a proportion of the employee's OTE. The connection between the employee's OTE and its impact on his or her SoW is indirect because complying contributions reduce the charge percentage which is to be inserted into the s19 calculation of the employee's shortfall, not the shortfall itself.

Although it does not reflect actual practice the structure of the SG(A) Act is that conceptually the employer assesses each employee's shortfall following each quarter in the context of relevant SoW and the net charge percentage for that quarter. The results of these calculations, if not zero, are then added together under s 17 SG(A) Act, nominal interest applied and the administrative component added to give the employer's shortfall for the relevant quarter. This is not simple.

2.3 The Bill – ordinary time earnings

The Bill makes OTE the basis for the calculation of the SG shortfall. It amends the SG(A) Act in two ways.

Item 3 inserts a new definition of ordinary time earnings. The current definition of OTE (s 6) is defined in terms of the employee's "…earnings in respect of [an employee's] ordinary hours of work". The new definition (s 11A) is defined in terms of "…total salary or wages paid that are earnings in respect of [an employee's] ordinary hours of work." As noted in the explanatory material (paras 1.25 – 1.26) the reference to SoW in the new definition of OTE is to establish a linkage between SoW and OTE so that earnings exempted by the definition of SoW (and which are therefore not taxable) are retained as exemptions from OTE under the Bill's new scheme.

This raises the question of why these exclusions from the shortfall calculation, because excluded by the definition of SoW, could not be directly excluded from OTE by the new definition. Directly excluding relevant forms of employee earnings from OTE would dispense with the need to retain the concept of SoW in the SG(A) Act. This would seem to be simpler.

2.3.1 Is the concept of SoW required for the maximum contribution base?

The maximum contribution base is the maximum amount of "superannuation taxable" employee income (SoW) allowed for calculating an individual shortfall (s 19(3) SG(A) Act). It establishes the ceiling for an individual shortfall in any quarter. However, to avoid a shortfall in a quarter, an employer must contribute on the basis of the employee's OTE to a ceiling imposed by the amount of the maximum contribution base (s 6 SG(A) Act). The Bill deletes s 19(3) (item 5) but the proposed s 11A definition of OTE retains this ceiling. Retaining the maximum contribution base ceiling does not require the concept of SoW to be retained.

2.3.2 Is the concept of SoW required for non-concessional contributions?

S 64 SI(S) Act requires an employer who has been authorised to deduct an amount from an employee's SoW and to make the non-concessional contribution on behalf of the employee to do so within 28 days of the month following the deduction. The use of SoW in this provision appears to address two issues. The first is to recognise that the employee is authorising an amount of non-concessional contribution which is to be deducted irrespective of the composition of the employee's earnings. Substituting "earnings" for "salary or wages" in s 64 would seem to retain this purpose.

The second issue is that the use of SoW in s 64 would seem to limit its applicability to earnings which could potentially form part of the shortfall, that is, earnings excluded from SoW are not subject to s 64. This issue may be more complex than first appears which could justify the retention of the notion of SoW in the Bill.

Recommendation 2: Retention of salary or wages

Consideration might be given to redrafting the Bill to do away with the need for the concept of "salary or wages" in the SG(A) Act, or, failing that, investigating the need to retain "salary or wages" with a view to a future amendment of the SG(A) Act.

It is implicit in the explanatory material that the proposed s 11A definition of OTE does not differ from the current s 6 definition in material terms, but it may assist to make that intention explicit in the tabled explanatory material. Apart from the differences referred to above there are some drafting changes in the restructured definition proposed as s 11A. Two seem to have the potential to alter the current understanding of OTE.

The first is that under the proposed s 11A excluded lump sum termination payments are explicitly linked to earnings for ordinary hours of work (s 11A(1)(a)(i)) but not to over-award payments etc., (s 11A(1)(a)(ii)) with the implication that an over-award annual leave payment on termination forms a part of that employee's OTE. This ambiguity potentially exists in the current s 6 definition but to a lesser extent and law and practice have not resulted in its being read in that fashion.

The second is that under the proposed s 11A OTE comprises earnings in respect of ordinary hours of work *or* over-award payments etc., with the implication that so long as the over-award payments etc., fall within SoW they form part of OTE. Again this reading is possible under the current s 6 definition, but this is not how OTE is currently construed.

Recommendation 3: Clarifying the effect of the new ordinary time earnings definition

Consideration could be given to clarifying that the new definition of "ordinary time earnings" in the Bill is not intended to alter its meaning.

Item 4 repeals the current s 19(1) SG(A) Act formula and substitutes an equivalent calculation based on OTE. As amended an individual SG shortfall is now the employee's OTE multiplied by the charge percentage, which is the same amount that, if paid promptly offsets the SG charge. However this latter fact is not apparent from s 19, it is provided by s 23, where conceptually the calculation is redone to ascertain the amount by which a complying contribution has reduced an employee's charge percentage. This is not as simple as it could be.

The need to treat defined benefit schemes differently means there is no single simple drafting solution but the fact that most contributions, and virtually all small business contributions, are not "made" into defined benefit schemes suggests that a more comprehensive redrafting of Part 3 SG(A) Act is warranted.

Recommendation 4: Clarifying the relationship between timely contributions and potential shortfalls

Consideration could be given to simplifying the provisions dealing with the calculation of actual individual shortfall more comprehensively, or failing that, to including a note under s 19(1) to the effect that, for contributions to complying funds (ie., which are not defined benefit schemes) timely

payment of the calculated amount avoids the SG charge, and directing attention to s 23 SG(A) Act.

Items 6 – 9 of the Bill deal with the specific application of the amendments to Norfolk Island. The Australian Chamber makes no comment about these amendments.

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3 The Bill – Part 2 – Nominal interest component

Part 2 of the Bill amends the way in which the nominal interest component is calculated. It proposes two amendments to the SG(A) Act. Item 10 makes a technical amendment to the reference to nominal interest component in s 6. Item 11 replaces the definition and calculation of the nominal interest component at s 31 SG(A) Act.

Conceptually the nominal interest component was intended to compensate the member for the earnings foregone because of the delayed contribution, but in fact the nominal interest component is itself punitive in two distinct ways.

S 31 of the SG(A) Act currently imposes the nominal interest component of the SG charge from the beginning of the quarter in which a SG shortfall arises until the date it is payable. The nominal interest component is also imposed on the shortfall, rather than the individual shortfall, although this effect is mediated by the operation of s 23A. The effect is that in the event that an employer identifies and pays its SG charge in a timely fashion, the shortfall attracts a minimum of 5 months' "nominal" interest despite the fact that the delayed contribution for that quarter has been overdue for not more than 28 days. Although there are other penalties possible for payment which is delayed past the 28th day of the second month after the quarter has ended, the nominal interest component becomes progressively less punitive the longer that payment is outstanding. This effect is more symbolic than determinative, but it is a somewhat contradictory outcome given the fact that the longer a contribution remains unpaid the lower the likelihood that it will be made.

The Bill's revised definition of nominal interest component applies interest to outstanding contribution from the time that it fell due – the day after the 28th day following a quarter – until the day before it is to be paid. In the event that it is not paid on time – in the following month – it continues to accrue until the day before there is an assessment or the guarantee statement is lodged and paid. Failure to pay on the assessment attracts the general interest charge, which is punitive.

Under the amendment interest is attracted for the period of time which the contribution is outstanding, and remedy is separated from penalty. This is appropriate. Linking the interest period to the relevant period that the contribution is outstanding is also consistent with the way that other tax related interest charges are applied, such as the general and shortfall interest charges.

3.1 Is it fair to the member?

The formal reason for the nominal interest component is to proxy investment earnings which the employee would have received had the contribution been made in a timely way, but in fact the 10% rate and its application is also punitive in the sense of being well in excess of what is being proxied.

Clearly a member is better off under the current regime if their contribution is made late. With respect to the nominal interest component there is a clear windfall for the member. The Bill's amendments reduce this windfall but it is clear that, with respect to earnings, a member is demonstrably better off receiving the nominal interest component for the period of the outstanding contribution than receiving their fund's return for that time.

The regulated rate of interest is 10% and has been at this level since July 1996. This 10% is applied to the whole contribution and applies with zero volatility. In comparison industry performance in the decade between June 2003 and June 2013 is an average rate of return of 6% with 9.5% volatility.[5]

The member is still clearly ahead. As well, this is not totally like with like. The rate of return is the net return on the fund's assets[6], ie., from the member's perspective it is a return from that part of the contribution which is actually invested, rather than the whole contribution.

[5] Table 13, p 33, *Statistics – Annual Superannuation Bulletin*, APRA, June 2013 (revised February 2014). The best performing sector, public sector funds, returned an average of 7%pa with a volatility of 9.7%. The rate of return is the net return on the fund's assets, ie., it is measured against that part of the contribution which is actually invested, rather than the whole contribution.

[6] P 44, *Statistics – Annual Superannuation Bulletin*, APRA, June 2013 (revised February 2014).

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4 The Bill – Part 3 – Additional superannuation guarantee charge

Part 3 of the Bill gives effect to the decision to alter the penalty regime associated with late reporting of the SG charge by removing the Part 7 SG(A) Act penalty regime.

Currently, as advised at para 1.7 of the explanatory material, if an employer does not lodge a SG statement, even where the shortfall was paid at some time after crystallising following the end of a quarter, the SG charge continues to attract the nominal interest rate. Under Part 7 SG(A) Act failure to lodge a SH statement or supply information when requested attracts a penalty of up to 200% of the SG charge at the time of assessment, disregarding any offsets to the actual SG charge which are permissible under s 23A SG(A) Act.

As well, under the SG(A) Act in its current form SG charge remaining unpaid after its due date, including the additional penalty SG charge imposed under Part 7, is liable to the general interest charge (s 49 SG(A) Act and s 8AAB(4) TA Act).

The decision to rationalise and make more equitable the SG penalty regime is welcomed and supported. The Australian Chamber has sought changes and it also notes that the inequities of the regime have been raised by others. The Board of Taxation said:

> The mandatory payment of superannuation contributions for employees is a core part of Australia's retirement income system. Employers face administrative costs to comply with this requirement and can face harsh and, in some cases, disproportionate penalties if reporting and payments are not strictly adhered to.[7]

In its recent report, the Australian National Audit Office also drew attention to the issue.

> The ATO has identified that one of the main causes of late SG payments is cash flow problems, especially among small businesses. Employers who wish to be compliant, but pay their SG obligations late and lodge an SG charge statement, are subject to penalties that the ATO has described as punitive and inequitable.[8]

Part 3 amends two other acts, the *Crimes (Taxation Offences) Act 1980* (**C(TO) Act**) and the TA Act and amends the SG(A) Act to make changes consequential to the decision to remove the current penalty provisions under the SG(A) Act and to replace them with the general tax penalty provisions under the TA Act. This is dealt with briefly in the explanatory material (paras 1.37 – 1.38).

The Australian Chamber notes that in its report the Board of Taxation also discussed the SG charge, penalties associated with it and the fact that the SG charge is not tax deductible. The Board discussed the Commissioner's lack of discretion when a SG charge is reported.[9]

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[7] Para 5.31, p 44, *Review of tax impediments facing small business*, Board of Taxation, August 2014.
[8] P 39, *Promoting Compliance with Superannuation Guarantee Obligations*, ANAO Report No.39 2014–15. The ANAO is quoting from an ATO review made to the Treasury aiming at improving the policy, law and administration of the SG Scheme. ATO, *Superannuation Guarantee Review*, May 2014.
[9] Para 5.54 – 5.64, pp 48 – 50, *Review of tax impediments facing small business*, Board of Taxation, August 2014.

Separately from its recommendation proposing that the SG charge be calculated on the basis of the employee's OTE (ie., the outstanding contribution), the Board recommended that the calculation of the SG charge components be redesigned, having regard to those parts of the SG charge which are making good the delayed contribution, and those which are directed to penalty.[10]

It may be that the Bill is regarded as the culmination of the consultation process which the Government advised in its response to this recommendation. If this is incorrect the Australian Chamber would be pleased to be a part of the continuing consultation process.

The Commissioner's discretion with respect to the SG charge is also an issue. The Chamber notes that the Board of Taxation concluded that redesign was preferable to providing the Commissioner with a discretion with respect to the SG charge because the law should provide the desired outcome in the first instance. The Board's conclusion here is best understood having regard to its Recommendation 5.6 which proposed that the current charge reporting and payment obligations be replaced by direct payment to the fund and records keeping.[11]

Preferring well designed legislation over discretion is a wholly defensible principle but one which in the complex array of exigencies surrounding correct, timely contributions, and reporting obligations, may be difficult to give effect to in practice.

The Australian Chamber notes that both with respect to current penalties and assessments, and the general taxation regime penalty structure, the Commissioner has statutory discretion. The Chamber believes that even with the reforms proposed by its recommendations the Board's conclusion against giving the Commissioner a discretion concerning the SG charge may have been premature.

Finally, in its Recommendation 5.5 the Board proposed that the components of the SG charge which were paid into the employee's superannuation account be made tax deductible. There is no doubt that the non-deductibility of the SG charge is a major factor conducing to non-payment and non-reporting of SG charge, particularly by small businesses, and is a major factor making it difficult for employers with late payments to get back on board. This is a dysfunctional outcome. It is well accepted that delay increases the likelihood of non-payment. The negative impact of the fact that SG charge is not tax deductible in tandem with the fact that a reported SG charge must be paid in full, and that an unreported SG charge even if paid, remains assessable, is why the Australian Chamber has proposed a small business SG charge amnesty.

[10] Recommendation 5.4, pp 50 – 51, *Review of tax impediments facing small business*, Board of Taxation, August 2014.
[11] P 51, *Review of tax impediments facing small business*, Board of Taxation, August 2014.

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5 The Bill – Part 4 – Application of amendments

Item 24 of the Bill commences its amendments with the first quarter on or after 1 July 2016. This is consistent with the Government's announcements of the amendments and is not opposed, although the Australian Chamber would welcome an earlier start date. However, a prospective commencement means that superannuation shortfalls from quarters starting before 1 July 2016 will be subject to the current rules.

These rules, as acknowledged in the explanatory materials, and as recognised by the fact that they are being changed, are significantly more punitive and costly than the compliance regime proposed by the Bill. Therefore the difficulties facing employers, particularly small employers, to make good shortfalls from quarters ending before 1 July 2016, and the potential that they will not be made good, remain.

The Bill's purpose is to simplify and reduce the harshness of the SG charge. These are both objects directed towards facilitating compliance. This fact would seem to add weight to the case for an amnesty to allow small businesses to make good their outstanding unpaid contributions – or in the case where contributions have been paid but are not consistent with choice, to issue a standard choice form with the new default fund identified, without attracting the implication of the outstanding unreported technical shortfall.

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6 About the Australian Chamber

6.1 Who We are

The Australian Chamber of Commerce and Industry speaks on behalf of Australian business at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia's most representative business organisation.

We speak on behalf of the business sector to government and the community, fostering a culture of enterprise and supporting policies that keep Australia competitive.

We also represent Australian business in international forums.

Our membership comprises all state and territory chambers of commerce and dozens of national industry associations. Individual businesses also get involved through our Business Leaders Council

6.2 What We Do

The Australian Chamber strives to make Australia a great place to do business in order to improve everyone's standard of living. We seek to create an environment in which businesspeople, employees and independent contractors can achieve their potential as part of a dynamic private sector. We encourage entrepreneurship and innovation to achieve prosperity, economic growth and jobs.

We focus on issues that impact on business, including economics, trade, workplace relations, work health and safety and employment, education and training.

We advocate for Australian business in public debate and to policy decision-makers, including ministers, shadow ministers, other members of parliament, ministerial policy advisors, public servants, regulators and other national agencies.

We represent the broad interests of the private sector rather than individual clients or a narrow sectional interest.

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