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# ***Glossary***

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The following abbreviations and acronyms are used throughout this explanatory memorandum.

<i>Abbreviation</i>	<i>Definition</i>
ATO	Australian Taxation Office
<i>Superannuation Guarantee (Administration) Act 1992</i>	SGAA
<i>Superannuation Industry (Supervision) Act 1993</i>	SIS Act
<i>Retirement Savings Accounts Act 1997</i>	RSA Act
<i>Fair Work Act 2009</i>	Fair Work Act
ITAA 1997	<i>Income Tax Assessment Act 1997</i>
RSA	Retirement Savings Account
SG	superannuation guarantee
The measure	Employer payslip reporting measure
The Act	<i>The Superannuation Industry (Supervision) Act 1993</i>

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## **General outline and financial impact**

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### **Superannuation – employers must report the date on which they expect to make superannuation contributions**

**Schedule X** to this Bill amends the *Superannuation Industry (Supervision) Act 1993* (the SIS Act) to require employers to report, on payslips, any information prescribed in the regulations about superannuation contributions.

- The regulations will in turn require employers to report the amount of superannuation contributions, as well as the date on which the employer expects to pay them.

**Date of effect:** These amendments apply to contributions accrued after 1 July 2012.

**Proposal announced:** This measure was announced during the 2010 election, and in the 2011-12 Budget.

**Financial impact:** This measure will have an ongoing cost to revenue over the forward estimates period as follows:

<i>2011-12</i>	<i>2012-13</i>	<i>2013-14</i>	<i>2014-15</i>
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The measure has a negligible ongoing revenue impact.

**Compliance cost impact:** Minimal/Medium. Software producers will need to add an additional field for the expected date, and employers will need to fill it in when issuing payslips.

### **Summary of regulation impact statement**

**Impact:** The RIS reports it would be less costly for employers to report an *expected* date than the alternative of requiring employers to report *actual* contributions on payslips (that is, contributions which they have actually paid to a fund or RSA).

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Software providers advise that the measure would require a relatively straightforward modification of the existing software, requiring only the addition of a field for the expected payment date.

The regulation impact statement (RIS) for Stronger Super implementation can be found at <http://ris.finance.gov.au/>. The relevant section of the RIS appears on pp.53 - 55, in section 4 of the SuperStream Appendix.

The RIS was cleared by the Office of Best Practice Regulation, and the measure is accordingly not subject to post implementation review.

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# **Chapter 1**

## **Statement of Compatibility with Human Rights**

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**Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011**

**Superannuation Legislation Amendment (Stronger Super and Other Measures Bill) (No. 2) Bill 2012: reporting expected superannuation contributions**

This Bill is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Bill**

This Bill will require most employers, when reporting superannuation contribution entitlements on payslips, to state the day by which the employers intends to make the contribution.

### **Human rights implications**

This Bill does not engage any of the applicable rights or freedoms.

### **Conclusion**

This Bill is compatible with human rights as it does not raise any human rights issues.

The Hon Bill Shorten MP

Minister for Financial Services and Superannuation

Minister for Employment and Workplace Relations

## **Chapter 2**

# ***Superannuation – payslips must report superannuation contributions, as set out in the regulations***

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### **Outline of chapter**

**Schedule X** to this Bill amends the *Superannuation Industry (Supervision) Act 1993* to require employers to report, on payslips, any information prescribed in the regulations about superannuation contributions.

- The regulations will in turn require employers to report the amount of superannuation contributions, as well as the date on which the employer expects to pay them. The regulations will be enacted once this Bill has come into force.

### **Context of amendments**

1. Some employers fail to pay their employees' superannuation entitlements. According to the Inspector-General of Taxation, the employees worst affected tend to be low-income, casual or part-time workers. The payslip reporting measure, which forms part of the Securing Super package, will provide greater protection for these vulnerable workers.
2. At present employers are required to report (on payslips) either *entitlements* to superannuation *accrued* during the pay-period, or *actual* contributions.
  - Section 536 of the *Fair Work Act 2009* (Fair Work Act) currently provides for payslip reporting and for the making of regulations about payslip reporting, while section 796 contains a broad, regulation making power. Regulation 3.46 sets out what specifically must be reported on a payslip.
3. This means that at present employees are unable to tell from their payslips whether their superannuation contributions have already been made, or when they will be made. While employers need to report accrued entitlements to superannuation guarantee (SG) contributions on

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payslips, they do not actually need to make SG contributions until 28 days after the end of the quarter concerned. Employees may be misled by the payslip into thinking that the contribution has actually been paid.

4. The broader measure is designed to require employers to report the date on which they expect to make their contribution. This will improve employer compliance since employers will be making a public (and checkable) statement on their payslips. The measure will also improve the timeliness of information by telling employees when they can check with their fund that their employer has made the contribution.

5. The payslip measure forms part of the Securing Super package, announced as an election commitment during the 2010 election campaign. Within the same package, the Government will also legislate to require APRA-regulated superannuation funds and RSA providers either:

- (i) to notify members that they have either 'received' or 'not received' contributions during the quarter, and maintain a web-based portal for members to consult. This would apply to members with active accounts, and would require quarterly, electronic notification; or
- (ii) to issue six monthly notices to members, with active accounts, which show contributions made.

Fund notification will complement the payslip measure, since it will provide employees with both the opportunity and the means of checking that their employer has made the required contribution.

6. While the current reporting requirements are in the Fair Work legislation, this does not apply to:

- public sector employers in a number of states (New South Wales, Queensland, Western Australia and South Australia);
- partnerships, sole traders and other unincorporated entities who joined the national workplace relations system through the States' referral of powers; and
- some (unincorporated) private sector employers in Western Australia.

7. For this reason the new requirements will go into the SIS Act.

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### Summary of new law

- 1.1 The measure will require employers to report, on payslips, any information prescribed in the regulations about superannuation contributions.
- The regulations will in turn require employers to report the amount of superannuation contributions and the date on which the employer expects to pay them.
  - At present, employers are required to report accrued superannuation contributions under the Fair Work Regulations. These requirements will be transferred to the SIS Regulations, along with the new ‘expected date’ requirement.

### Comparison of key features of new law and current law

<i>New law</i>	<i>Current law</i>
Employers will be required, under the new measure, to report their superannuation contributions in the manner set out in the SIS regulations—which have not yet been enacted.	Employers are currently required to report, on payslips, either (i) <i>entitlements</i> to superannuation <i>accrued</i> during the pay-period, or (ii) <i>actual</i> contributions. They are not required to distinguish between the two cases.

### Detailed explanation of new law

- 1.2 Section 1 of the Bill enlarges the object of the SIS Act, to make it clear that the Act can regulate employers when they issue payslips. It does this by amending section 3(1) of the SIS Act.
- It is worth noting that subsection 3(3) of the Act says that the ‘Act does not regulate other entities engaged in the superannuation industry’. However, this means that the SIS Act does not regulate unregulated superannuation funds. It is not meant to prevent the regulation of employers when they interact with regulated superannuation funds (and section 64 of the Act already does so,

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requiring employers to remit deductions from salary and wages promptly). Employers are not, in this sense, ‘entities engaged in the superannuation industry’ since they do not themselves act as superannuation funds or RSAs.

1.3 Section 2 of the Bill makes the Fair Work Ombudsman responsible for administering the new payslip provisions (by amending subsection 6(1) of the Act).

1.4 Sections 3, 4 and 5 of the Bill add new terms to the definitions given in section 10 of the SIS Act. In particular, they give the term ‘Fair Work Inspector’ the meaning it has in the Fair Work Act, the term ‘industrial agreement’ the meaning it has in the ITAA 97, and the term ‘salary or wages’ the meaning it has in the SGAA.

1.5 Section 6 of the Bill repeals the existing definition of salary or wages in section 64(4) of the Act, because the definition is now grouped with the other definitions in section 10 of the Act.

1.6 Section 7 is the substantive amendment, and establishes a power within the Act to create the regulations which will specify how employers must report superannuation contributions. It introduces a new Part (Part 29B) with a number of new sections into the SIS Act.

1.7 The new section 336J sets out the object of the Part, which is ‘to require employers to regularly give information about the superannuation contributions they have made or will make for the benefit of their employees’.

1.8 The new section 336JA(1) imposes the new requirements on employers if they are otherwise required to issue payslips (under an industrial agreement) and if they ‘can’ make a contribution to a superannuation fund on behalf of the employee concerned. The word ‘can’ is used because the measure extends beyond those employers who are *obliged* to make superannuation contributions, for instance by an industrial agreement, and includes those employers who choose to make contributions.

- Technically, employers are not obliged to make superannuation guarantee contributions and can choose instead to pay the superannuation guarantee charge, though most choose to make contributions because the superannuation guarantee charge is not tax deductible. The measure therefore uses the word ‘can’ so as to require employers who choose to make contributions to report these on payslips.



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1.9 The new paragraph 336JA(1)(d) excludes cases where employees are members of defined benefit funds (where in many cases contributions during the employee's working life are merely nominal). However, employers are still required to report contributions into the accumulation part of hybrid funds (those funds which contain both defined benefit and accumulation elements).

1.10 The new subsection 336JA(2) requires the affected employers to include on their payslips any information required under the Regulations.

1.11 The new section 336JB makes the new provision a civil remedy provision under the Fair Work Act, despite the fact that the provision is located in the SIS Act. This will allow Fair Work Inspectors to use their usual powers under the Fair Work Act when enforcing the new provision.

1.12 The new section 336JC give the new Part in the SIS Act the same geographic coverage as that set out in the Fair Work Act. This means that Fair Work Inspectors will have authority within the same geographic area as they usually do under the Fair Work Act.

1.13 The new subsection 336JD(1) sets out the Fair Work Ombudsman's functions in respect of the new provision, including promoting compliance, monitoring and investigating, commencing proceedings in a court and representing employees in court.

1.14 Subsections (2) and (3) allow Fair Work Inspectors to use their usual powers under the Fair Work Act when regulating the payslip provisions in the Part 29B of the SIS Act (i.e. the new Part under discussion here).

1.15 Because the provisions of the Fair Work Act will largely apply when Fair Work Inspectors oversee the new payslip measure, subsection (4) makes a number of the provisions (and powers) in the SIS Act inapplicable to them. These include the powers conveyed by:

- Part 25 of the SIS Act (monitoring and investigating superannuation entities);
- Part 26 (offences relating to statements, records, etc.);
- Part 27 (powers of court); and
- Part 28 (proceedings).

1.16 The new section 336JE allows Fair Work Inspectors to disclose information which they acquire when regulating payslips, to the Minister responsible for the SIS Act and his or her Department. This extends the

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current powers of Fair Work Inspectors to disclose information to the Minister responsible for the Fair Work Act and his or her Department, as set out in section 718 of the Fair Work Act.

1.17 The new section 336JF sets out an alternative constitutional basis for the measure.

### **Application and transitional provisions**

1.1 Section 8 of the Bill applies the amendments to salary or wages paid on or after 1 July 2012.

### **Consequential amendments**

1.2 There are no consequential amendments.