

GMS Flash Alert

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Australia - Superannuation Amnesty Bill Passes Parliament

Employers will have a six-month amnesty to correct historical Australian superannuation shortfalls, following the passage of key legislation. The *Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019* passed both Houses of Parliament on 24 February and now awaits Royal Assent.¹

The Bill:

- provides for a one-off amnesty to encourage employers to self-correct historical superannuation guarantee non-compliance;
- limits the Commissioner of Taxation's ability to remit penalties for historical superannuation guarantee non-compliance where an employer fails to disclose information relevant to its historical superannuation guarantee shortfall.

WHY THIS MATTERS

This is a significant opportunity for employers to self-correct past superannuation guarantee (SG) non-compliance without the usual heavy penalty regime. Once the amnesty ends, a new and even more onerous penalty regime will apply with an increased level of Australian Taxation Office (ATO) activity expected following the introduction of Single Touch Payroll (comprehensive payroll and superannuation reporting regime).

More Details

The amnesty includes under-payments outside a payroll system, such as superannuation contributions that can be required for contractors, directors, and expatriates.

The key details regarding the amnesty are that it:

- only applies for six months from the time the Bill receives Royal Assent, so organisations should act quickly (identifying and quantifying errors can take time);
- results in no penalties applying for failing to lodge a Superannuation Guarantee Charge (SGC) statement (this can be up to 200 percent of the SGC amount);
- only applies to shortfalls up to the quarter ending 31 March 2018, but as far back 1992, being when the Superannuation Guarantee regime was introduced;
- does not reduce the 10-percent interest included in the SGC, as this interest is paid into an employee's superannuation fund to compensate for any earnings within the fund had there not been a shortfall;
- allows tax deductions for SGC amounts disclosed within the amnesty (normally SGC is not tax deductible for the employer in their corporate income tax return);
- waives the administration fee (A\$20 per employee for each quarter there is a shortfall); and
- is only available if the Commissioner has not informed the employer that he is examining (or intends to) the employer's obligation to pay superannuation for a quarter.

KPMG NOTE

Post-Amnesty, No Penalty Remission Available

Unlike other taxes, after the amnesty ends, the Commissioner will not be able to provide any penalty remission below 100 percent – even if the organisation took reasonable care or has a reasonably arguable position.

Government Expectations

Over 7,000 employers have already voluntarily disclosed their historical under-payments, and a further 7,000 are expected to come forward during the amnesty. Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume has stated that the total superannuation expected to be paid as a result of the amnesty will be approximately A\$230 million.³

Why Should Employers Respond?

The increased media scrutiny on employers combined with the revenue authorities' real time access to wage information through Single Touch Payroll means it is vital that employers be proactive in fostering their compliance with superannuation and wage payments.

This amnesty provides employers with a one-off opportunity to correct their historical errors.

FOOTNOTES:

- 1 For more information on the legislation (texts, status, debates, reports, etc.), see: https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bld=r6413 .
- 2 For prior coverage of an earlier superannuation amnesty, see, see GMS [Flash Alert 2018-082](#) (8 June 2018).
- 3 Assistant Minister for Superannuation, Financial Services and Financial Technology Jane Hume discussed the expected outcomes of the amnesty [during a speech delivered recently](#) to the Conexus Financial Superannuation Chair Forum.

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