Treasury Laws Amendment (Recovering Unpaid Superannuation) Bill 2019

(Amendments to be moved by Senator McAllister, on behalf of the Opposition, in committee of the whole)

(1) Clause 2, page 2 (at the end of the table), add:

6. Schedule 2 The day after the end of the period of 6 months beginning on the day this Act receives the Royal Assent.

[commencement]

(2) Page 9 (after line 28), at the end of the Bill, add:

Schedule 2—Superannuation contributions in National Employment Standards

Fair Work Act 2009

1 After paragraph 61(2)(h)
Insert:
(ha) superannuation contributions (Division 10A);

2 After Division 10 of Part 2-2 of Chapter 2
Insert:
Division 10A—Superannuation contributions

116A Superannuation contributions

Obligation in relation to contributions

(1) An employer must make contributions to a superannuation fund for the benefit of an employee so as to avoid liability to pay superannuation guarantee charge under the Superannuation Guarantee Charge Act 1992 in relation to the employee.

Amount of contributions

(2) The amount of the contributions relating to the employee is to be worked out:
   (a) in accordance with the Superannuation Guarantee (Administration) Act 1992; or
   (b) if a modern award or enterprise agreement applies to the employee and provides for an amount higher than the amount applicable under paragraph (a)—in accordance with the modern award or enterprise agreement (as the case requires).

Superannuation fund

(3) The superannuation fund to which the contributions relating to the employee are made must be:
   (a) if a superannuation fund is a chosen fund (within the meaning of the Superannuation Guarantee (Administration) Act 1992) for the employee—that superannuation fund; or
   (b) if there is no chosen fund (within the meaning of that Act) for the employee and a modern award or enterprise agreement applies to the employee—the superannuation fund specified in the modern award or enterprise agreement (as the case requires); or
   (c) otherwise—a superannuation fund for which the choice of fund requirements in section 32C of that Act are satisfied in relation to the contributions to the fund.

Salary sacrifice arrangements

(4) A contribution made by an employer to a superannuation fund for the benefit of an employee under a salary sacrifice arrangement (within the meaning of the Superannuation Guarantee (Administration) Act 1992) with the employee does not satisfy the employer’s obligation to make contributions under subsection (1).

Superannuation Guarantee (Administration) Act 1992

3 After subsection 37(1)

Insert:

(1A) Without limiting subsection (1), the Commissioner may amend an assessment if a court or tribunal has ordered the payment of superannuation contributions in relation to an employee and the order has been complied with.

[superannuation contributions in National Employment Standards]