

Rest Super Submission – Addressing corporate misuse of the Fair Entitlements Guarantee

31 March 2025

Rest appreciates the opportunity to respond to the discussion paper on *Addressing corporate misuse of the Fair Entitlements Guarantee* (FEG).

Rest is one of Australia's largest superannuation funds, with around two million members – or around one-in-seven working Australians – and around \$93 billion in assets under management¹. We represent around one million members under the age of 30, who are decades from retirement. Many of our members work in part-time or casual jobs and tend to have lower balances by the time they reach retirement. We put our members needs at the centre of everything we do, and we are deeply committed to maximising the retirement outcomes of our members.

The FEG provides a crucial mechanism to support the payment of wages and other entitlements to working Australians in the event of business failures. We acknowledge that there are circumstances in which the FEG can be used to avoid liabilities, and we support the Department of Employment and Workplace Relations and their engagement with industry on recommendations to improve the integrity of the program.

Rest is concerned about the extent of unpaid superannuation in Australia, with recent data² showing that \$5.1 billion was unpaid in 2021-22. While not all unpaid superannuation is due to insolvency, we welcome any measures to limit the extent of outstanding payments. Rest has long-standing processes to follow up on unpaid superannuation for our members and we have an ongoing commitment to recover payments, including supporting members to work through the Australian Taxation Office processes to pursue unpaid amounts from their employers.

We make this submission to respond to the specific question of the treatment of the Superannuation Guarantee Charge (SGC), namely, '*Question 7. Should the definition of employee entitlements at section 596AA be amended to include SGC? If not, why not?*'.

Rest strongly supports measures that treat superannuation contributions with the same priority as salary and wages in cases of employer non-payment. Superannuation is vital for supporting income in retirement, effectively in the place of wages, and the priority of these liabilities should reflect the fundamental role of superannuation for an employee's financial security. Therefore, section 596AA of the Corporations Act should be amended to more explicitly include unpaid SGC amounts.

However, currently the FEG, which provides for government to 'advance' certain entitlements to employees in insolvency or bankruptcy circumstances, does not include superannuation entitlements. While the FEG Recovery Program, which seeks recovery of amounts advanced, has been extended since 2024 to unpaid SGC, this does not extend to advances paid to employees. Unpaid superannuation amounts should be included in the FEG to appropriately recognise these amounts as entitlements due to employees equivalent to unpaid wages and remove the need for employees to pursue these amounts through a separate administrative program.

Recommendation:

Rest recommends section 596AA of the Corporations Act be amended to more explicitly include unpaid SGC amounts. Further, the FEG should be amended to include unpaid superannuation entitlements, in advances provided to employees, rather than relying only on Australian Taxation Office compliance programs.

¹ As at 31 December 2024.

² <https://smcaustralia.com/report-fixing-unpaid-super/>