# Employers with unpaid super given a one-off amnesty

Some two years after it was first announced, the Government's super amnesty passed Parliament on 24/2/2020.

The bill, currently awaiting Royal Assent, provides employers who have not paid their employee super a one-off chance to bring these amounts up to date or risk facing tougher penalties once the amnesty period expires.

## Here's the facts:

- Amnesty period runs from 24/5/18 to six months after Royal Assent (six months is likely to expire around the end of August, 2020)
- The amnesty covers unpaid super from 1/7/1992 through to 24/5/2018.
- Super owing outside of those dates still needs to be paid but the amnesty concessions do not apply
- The amnesty provides some significant concessions for employers who come forward during the amnesty period:

| | NORMAL RULES THAT APPLY TO LATE SUPER | AMNESTY CONCESSIONS |
|---|---|---|
| Lodge and pay late super on the ATO Superannuation Guarantee Charge form | Yes | Yes, however use special Amnesty form |
| Tax deduction for super that is paid late | No | Yes |
| ATO administrative charge of $20 per quarter per employee | Charged | Waived |
| Interest charged (which is remitted to the employee's super fund) | Charged | Charged |

- The Government have warned that employers who do not come forward and pay unpaid super during the amnesty period may be liable for tougher penalties in the future. This can include:
    - Director penalty notices – directors can become personally liable for the unpaid super of their business
    - Garnishee notices – the ATO will issue a Garnishee notice directly to your bank authorizing them to withdraw funds from your bank account
    - Direction to pay SGC – the ATO can issue a direction to pay notice. Non-compliance with these notices can lead to criminal convictions.
    - Bankruptcy/Statutory demand/summons etc

## What should you do if you have unpaid super

We are encouraging all employers to take action straight away. You only have six months from the date the legislation receives Royal Assent to report and pay your unpaid super before the amnesty finishes.

If you have unpaid super:

1) Gather your employee records – full name, tax file number, super fund details, wages paid for each quarter
2) Calculate the amount of unpaid super, per employee, per quarter
3) Prepare a Superannuation Guarantee charge statement. This needs to be done for each quarter, for each employee that you have unpaid super for.
4) Calculate the total amount of unpaid super and interest.
5) The statement can be prepared via the ATO Business Portal .
6) Lodge the Superannuation Guarantee charge statement with the Tax Office.
7) Pay the outstanding super.
8) If you are unable to pay, you may be able to arrange a payment arrangement with the Tax Office. Note, the ATO treat this as a priority debt so the ATO will require payment is made promptly.

We have worked with clients recently to help them through this process. If you are struggling to get started, please talk to us as soon as possible - it's important you act during the amnesty period.

## Want to know more about your employer obligations:

1) Refer to our Summary of Employer Super obligations fact sheet on our website, click here
2) Refer to our Staff Checklist fact on our website, click here
3) Review the ATO's guide here
4) Make sure all your employees have been issued with a Super Choice Form
5) Check your payroll settings to ensure your super is calculating correctly.
6) If you have unpaid super you will need to lodge a Superannuation Guarantee charge statement. For more information, click here.