Superannuation Legislation Amendment (Fair Super for Young Workers) Bill 2026

HIA Submission to the Senate Economics Legislation Committee

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Contents page

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EXECUTIVE SUMMARY

The Housing Industry Association (HIA) welcomes the opportunity to provide feedback on the proposed Superannuation Legislation Amendment (Fair Super for Young Workers) Bill 2026 to the Senate Economics Legislation Committee.

HIA is Australia's peak body for the residential building industry, representing builders, contractors, trade businesses, and suppliers across all states and territories. The residential building industry employs approximately 54 per cent of all small business apprentices nationally. HIA actively represents members before the Fair Work Commission, parliamentary committees, and government on workplace relations matters including wage-setting, employment conditions, and the structure of compulsory superannuation obligations.

HIA opposes the passage of the Superannuation Legislation Amendment (Fair Super for Young Workers) Bill 2026 in its current form, and opposes its passage without the precondition of structured consultation with employer groups, industry-specific impact assessment, and an adequate implementation transition period.

HIA's concerns are in relation to the structural and technical defects contained within the Bill, as drafted, that go well beyond the reform's stated policy objective (noting that the defects have also been acknowledged by the Government). HIA is also concerned about the mandatory cost increase on small businesses in the residential building industry that would result from this Bill without adequate justification, evidence-base, or safeguards; and does so at a time of cumulative and compounding employment cost pressures on the sector.

HIA's position is that this Bill is the wrong vehicle to support the principle of extending SG entitlements to young workers in appropriate circumstances and following proper process. Whether a future, properly designed reform would be acceptable to HIA members is a matter for that future consultation process.

Recommendations

HIA recommends that the Senate Economics Legislation Committee not support the passage of this Bill in its current form.

Specifically, HIA recommends the Committee find that:

1. the proposed section 10A(3A) constitutes an overbroad legislative constraint that goes beyond the stated policy objective. This provision should not proceed without independent legal analysis of its interaction with the full superannuation guarantee framework, including international social security agreement arrangements and other existing exemptions;
2. the absence of transitional provisions is a significant structural defect in the proposed reform that would expose small employers, including small building businesses employing junior and school-based apprentices, to immediate penalty liability without adequate notice or support;
3. any reform to extend SG coverage to under-18 workers should be preceded by genuine, structured consultation with employer representatives, including industry-specific assessment of impact on junior and school-based apprenticeship arrangements in the residential building industry, before any proposed policy reform is progressed; and
4. the proposed reform to extend SG coverage to under-18 workers should not be progressed until the Payday Super regime has had sufficient time to be fully embedded and compliance outcomes adequately assessed.

HIA reserves its position on the design and scope of any future reform until that consultation process occurs and the cost, compliance, and employment impacts on the residential building industry can be properly assessed.

The Bill's Operative Mechanism

Understanding HIA's objections requires understanding precisely what the Bill does. Schedule 1 makes two operative amendments:

Amendment 1 inserts new subsection 10A(3A) into the Superannuation Guarantee (Administration) Act 1992, which reads (in relevant part):

> *The regulations must not (despite subsection (3)) prescribe any of the following: (a) if the regulations are made for the purposes of subparagraph (3)(b)(i) - an employee who is under 18 ...*

HIA contends that this is not merely a repeal of an existing exemption but it equates to a prohibition on future regulatory action; meaning that it is in effect a legislated constraint that prevents any future Executive Government from ever prescribing, by regulation, any exclusion from SG coverage for an employee under the age of 18. Accordingly, the effect of this proposed head of regulatory power is to lock off this class of worker from future reform entirely.

Amendment 3 then repeals paragraph 11(f) of the *Superannuation Guarantee (Administration) Regulations 2018*, which provides for the existing exemption for employees under 18 working 30 hours or fewer per week.

The interaction between these two amendments is the source of most of the Bill's technical defects, as set out in HIA's substantive points below.

Grounds for Opposition

1. Employment Cost Impact on Small Businesses in the Residential Building Sector

HIA's submission to the Fair Work Commission's *Annual Wage Review 2026* documented the cumulative cost impositions bearing on small builders and trade contractors: a 4.75% minimum wage increase, award wage adjustments, and more recently, the Payday Super regime which commenced 1 July 2026. This Bill would add a further 12% on-cost on qualifying payments to under-18 workers, effective the day after Royal Assent.

The practical effect on the residential building industry falls primarily on junior and school-based apprentices. This cohort comprises of young people undertaking vocational training, some while completing secondary education, who commonly work fewer than 30 hours per week. Employers who host junior and school-based apprenticeships accept lower productivity and significant supervision and training obligations in exchange for developing the next generation of construction tradespeople. Adding an immediate 12% SG liability on these arrangements will, at the margin, reduce employer willingness to offer them at all. HIA has considerable concerns about this outcome and its resulting impact on the current tradie shortage the construction sector is facing.

HIA's latest workforce research, *Australia's Future is Built by Tradies*,[1] highlights a shortage of around 83,000 skilled workers across the residential construction industry nationwide. This structural deficit is directly contingent on sustaining apprenticeship commencement and completion pipelines, as well as strengthening school-to-trade pathways.

[1] HIA, *Australia's Future is Built By Tradies*, September 2026: https://hia.com.au/our-industry/-/media/files/newsroom/submissions/2026/australias-future-is-built-by-tradies.pdf

HIA has put before Governments of all levels, and recently the Fair Work Commission, data that confirms that construction apprenticeship commencements declined 18.6% in the September 2024 quarter and have not recovered. HIA's current workforce data further confirms that completion rates remain a persistent challenge independent of commencement trends, meaning that employer willingness to host training arrangements is a critical variable. As small businesses do the heavy lifting in construction apprentice training, any measure that narrows their margin to absorb apprentice and training costs directly constricts supply into the skills pipeline.

An illustrative example can be found in the scenario of an employer investment in a school-based carpenter apprentice, earning $39,000 - $42,000 during a 3-4 year training period. This worker represents a below-market wage (in accordance with all relevant award provisions) in exchange for structured skills acquisition that ultimately delivers $80,000-$95,000 in post-qualification earnings. The cost structure of that arrangement means that the productivity differential of a young and developing worker is absorbed by the small business employer. An additional 12 per cent SG impost on that cohort would narrow the margin to a point where a rational employer response is to defer, reduce or decline to offer placements.

With governments pursuing ambitious housing targets, and growing competition for skilled workers from infrastructure, energy and digital economy projects, Australia must focus on growing the overall workforce. As observed in the second reading debate of this Bill, the concern with this kind of reform is that "*if you legislate an entitlement, you might also inadvertently at the same time take away an opportunity*." In the context of the residential building industry, that lost opportunity is the junior and school-based apprenticeship pathway for young people who cannot yet commit to full-time trade training.

HIA does not dispute that an under 18-year-old performing genuine construction work deserves fair treatment. However, the question the Committee needs to address is whether this Bill delivers that treatment responsibly, or whether it creates unintended consequences for the very employment relationships it is meant to benefit.

HIA contends that housing, infrastructure, energy and technology projects all rely on skilled trades. If we want to achieve our national objectives across all of these areas, we need a larger and stronger workforce. Accordingly, HIA cannot support any policy or reform proposal that negatively impacts the ability for the sector to grow the workforce.

2. Structural overreach of the proposed s.10A(3A) Head of Power

HIA contends that the most significant technical defect in the Bill is proposed section 10A(3A), which has the effect of permanently prohibiting regulations from excluding under-18 employees from SG coverage for any reason.

The Government identified this consequence directly in its second reading debate contribution: "*The bill restricts the capacity for future regulations to provide exclusions applying to workers under 18. Again, that extends considerably beyond the straightforward policy proposition that young people should generally receive superannuation on their wages*."

There are fundamental legislative issues when legislation attempts to constrain the regulatory or legislative options available to future Parliaments. It is at odds with the foundational constitutional principle that no Parliament may bind its successors, as a structural safeguard against the entrenchment of policy outcomes sought at one time. In a functioning democracy, the legislature must retain the freedom to be responsive to changing evidence, evolving circumstances and democratic mandate when it comes to law-making.

The offending provision, as it stands, has the effect that Parliament and the Executive are constrained from implementing a regulatory carve-out for under-18 workers, even in circumstances where evidence or operational experience or unique industry sector conditions demonstrates that one is warranted. If, for example, Government determined that junior and school-based vocational arrangements had characteristics justifying modified treatment, or that international workers on temporary visas in specific circumstances needed different handling, or that payday super implementation had created compliance problems for certain classes of youth employment; none of these could be addressed by regulation. New primary legislation would be required to remove the prohibition in the head of power provision.

Furthermore, HIA contends that this is poor legislative design. Where a policy objective can be achieved by simply repealing the existing exemption under 11(f), the additional insertion of a permanent constraint on future regulatory power amounts to a significant overreach of the intended purpose. The Explanatory Memorandum does not provide any explanation or justification, and HIA is unaware of any evidence that would support such a provision.

3. Interaction with Existing Exemptions and the Broader Regulatory Framework

As the Government stated in its second reading contribution: "*the amendments interact with the wider superannuation guarantee framework, and they risk creating uncertainty about the operation of exemptions and carve-outs which have existed for reasons entirely unrelated to the treatment of young workers*."

The current under-18 exemption in paragraph 11(f) of the Regulations sits within a broader framework of employee exclusions that includes non-resident workers, Australian Defence Force service members, workers covered by certain domestic arrangements, and others. The proposed s.10A(3A) would operate as a prohibition on any regulatory exclusion of an under-18 employee, and not just on the intended age-based exclusions per se. The interaction of that prohibition with the existing architecture of exemptions, and in particular with how those exemptions apply to workers who happen to be under 18, is not addressed anywhere in the Bill or the supporting materials.

The Government further outlined practical consequence of this proposed exclusion: "*If we end up with exemptions operating one way for a 19-year-old worker but potentially operating differently for a 17-year-old worker in otherwise identical circumstances, we have actually not simplified the superannuation system. We've made it complex, we've made it more complicated, we've created uncertainty for employers, we've created uncertainty for the funds and for the regulators, and, most importantly, we've created uncertainty for the very workers this bill would be intended to help*."

HIA broadly agrees with Government's assessment. Small building businesses cannot absorb the compliance risk created by a SG framework that operates inconsistently depending on whether a worker is above or below 18. The duty to interpret and apply the law would fall on the employer, with no indication that the Government would provide any support or guidance to industry in terms of compliance obligations.

4. International Social Security Agreement Interaction

HIA notes the Government's comments regarding Australia's obligations in relation to bilateral international social security agreements that modify SG obligations for certain workers to prevent dual coverage of compulsory retirement savings. Section 15C of the *Superannuation Guarantee (Administration) Act 1992* gives effect to these arrangements through certificates of coverage issued by the Commissioner.

The Bill's prohibition on regulatory exclusions for under-18 employees does not address the interaction between that prohibition and the international social security agreement framework. Where an under-18 worker in Australia holds a certificate of coverage under a bilateral agreement, the legal effect of the proposed s.10A(3A) on that worker's SG entitlement is unclear as the supporting materials do not cover this issue at all. This is of great concern to HIA as the construction industry regularly employs temporary overseas workers in labouring and trade support roles.

5. Concerns regarding intended commencement and lack of transitional provisions

HIA notes that the provisions in this Bill, if successfully passed, are set to commence immediately after Royal Assent, and that there is no transitional period afforded. For a superannuation reform of this nature, that is a completely inappropriate outcome.

The practical consequence would be that all businesses currently not making SG contributions for under-18 part-time workers, which is likely to be the overwhelming majority, given the existing exemption, would be immediately legally obligated to do so with no notice period, no payroll adjustment lead time, no opportunity to identify affected workers, and no ability to establish fund relationships before the first qualifying pay cycle. Under the Payday Super regime that commenced 1 July 2026, contributions must be made concurrently with wages and entitlements. Therefore, an employer who misses the first pay cycle after Royal Assent, inadvertent or otherwise, would be immediately liable for the SG charge and associated penalties, and be in contravention of wage theft laws.

HIA contends that adding a new class of SG-eligible workers onto a Payday Super framework that is still being embedded is administratively unreasonable for small businesses, particularly those without dedicated payroll infrastructure. It is contrary to the Government's position in this regard, which has consistently been that Payday Super implementation should stabilise before further structural changes to SG coverage are made.

HIA urges the Committee to appropriately consider that SG reforms with employer cost implications require adequate notice and implementation time, regardless of their policy merits.

6. Employment Substitution Effects on Youth Unemployment

The youth unemployment rate sits at 10.4 per cent (as at July 2026), which has been steadily rising from the historic lows of 7.1 per cent in July 2022. These figures need to be considered when assessing the operational realities of when the effective cost of employing young workers increases, employers at the margin substitute more experienced workers who require less training and supervision. This is particularly acute for small building businesses, where a single unproductive hire represents a meaningful risk.

HIA has consistently argued that junior and apprentice wage classifications reflect genuine productivity differentials and training investment risks for home building businesses, rather than a mechanism to exploit young workers. Accordingly, HIA strongly opposes any characterisation that fails to appropriately reflect the reality of small-building-industry employment, where the employer's investment in the young worker through training, supervision, and tool provision, is substantial and often not recovered within the relevant employment period.