

CHAPTER 5 : COMPLIANCE AND COVERAGE

Award Superannuation Compliance

5.1 In June 1986, the Conciliation and Arbitration Commission decided that it would be prepared to 'certify agreements or make consent awards covering superannuation'.¹ It fixed 1 January 1987 as the starting date but, following representations from the Commonwealth, agreed to arbitrate where agreement could not be reached and extended the operative date to 1 January 1988, subsequently further extending it to 1 September 1988. State industrial tribunals have generally followed the Commission's decisions.²

5.2 The coverage of award superannuation has increased rapidly since its introduction and the Department of Industrial Relations (DIR) was able to inform the Committee that, by October 1991, over 90 per cent of employees under federal awards were entitled to award superannuation, with a 'broadly similar' coverage in State jurisdictions.³ Since about 80 per cent of wage and salary earners are covered by awards, around 72 per cent of all employees were eligible for superannuation cover.⁴ The Department estimates that about one-fifth of these were not covered, i.e. around 14 per cent of all employees.⁵

5.3 The main reasons given by employers for their failure to comply with award provisions were ignorance and uncertainty relating to both the existence of the provisions and the precise nature of the action required of them.⁶

5.4 The DIR responded to this situation by stepping up its compliance activities, moving to strengthen the legislation and implementing a publicity campaign to overcome the prevailing ignorance, uncertainty and, probably evasion. Particular attention was paid to accountants as advisers to small business, where compliance was lowest.⁷

5.5 Mr Peter Boyle, of the Australian Small Business Association, said that many small businesses were not complying because they could not afford to pay and that the move to compulsion would 'further exacerbate the high rate of small business failure and/or will lead to a substantial reduction in employment'.⁸

1 DIR, Sub No. 81, p 8.

2 *ibid*, pp 8-9.

3 *ibid*, p 10.

4 *ibid*, p 6.

5 Evidence, p 1837.

6 *ibid*, pp 1831-32.

7 DIR Sub No. 81, pp 11-12.

8 SG evidence, p 176.

5.6 In addition to award non-compliance, a further gap in the superannuation coverage of wage and salary employees occurs in the estimated 20 per cent who are not covered by awards. A significant number of these, for example, managerial and professional employees, estimated by the Department at about one-third, would be covered by traditional occupational superannuation schemes. Many, perhaps more than half, have no superannuation.

5.7 Thus, it appears that around 25-30 per cent of eligible wage and salary earners have no superannuation cover. The SGL is designed to extend cover to this group, as well as to increase, over time, the depth of cover to all employees. A further group, numbering perhaps eight per cent, although covered by awards, are outside superannuation schemes by reason of the casual nature of their employment, very low earnings or failure to meet service qualifying periods.

5.8 The proposed charge aims to extend superannuation coverage to employees not already covered by levying a charge on employers, at least equal to current award superannuation requirements plus interest and administration components. The amounts collected, less the administration component, will be paid into complying superannuation funds nominated by the affected employees. As the impost will not be tax deductible, there will be a strong financial incentive for employers to arrange superannuation cover for the employees concerned, thereby avoiding the charge altogether.

5.9 Among the few exemptions are employees over 65 years of age, part time employees under 18 and those earning less than \$250 per month.

5.10 From a breadth of cover viewpoint, the essence of the legislation is therefore to make superannuation compulsory for all but the youngest, oldest and most transitory of all employees.

Coverage for Disadvantaged Groups

5.11 As both contributions and benefits are linked to income, it follows that those who benefit most are those whose incomes are highest and those with the longest periods of continuous service. At the opposite end of the spectrum, those with relatively low lifetime earnings necessarily attract lower employer contributions, pay proportionately higher administrative charges, are less able to finance private superannuation and benefit less from the taxation concessions.

5.12 For this reason, some organisations representing disadvantaged groups saw little or no benefit in superannuation in general, or the SGL in particular. For example, Ms Jane Elix of Australian Federation of Consumer Organisations (AFCO) told the Committee that:

The two million part-time and casual employees will be losing ... The one million unemployed will be losing, as they are not actually going to be part of this process ... Almost all female workers will be losing as it is rare for them to be in a position to put away enough money to ensure that they have an adequate retirement income.⁹

5.13 The Australian Council of Social Service (ACOSS) was concerned that the programmed increases in superannuation contributions would be at the expense of wage increases. The lower paid workers would therefore be deprived of much-needed wage increases without any compensating benefit.¹⁰ Ms Eva Cox, of the Women's Economic Think Tank (WET Tank), noted that, since fund earnings were taxed, those temporarily out of the work-force, eg for maternity reasons, would have their superannuation savings taxed at up to 15 percent, whereas the same amount in conventional savings would be tax free.¹¹ The WET Tank proposed a threshold of \$6 000 per year.¹²

5.14 The ACTU believes that low-paid workers, mainly women, are already disadvantaged and that equity requires that they should benefit fully from superannuation. It denies that a wage increase is a possible alternative. It proposes the establishment by the SGL legislation of a 'floor' contribution of a flat amount equal to around five per cent of AWE. This would enable low-income earners to receive a higher level of superannuation cover than their incomes would otherwise determine.¹³

5.15 AFCO was concerned that the total cost of superannuation tax concessions was greater than the additional cost of establishing a universal age pension.¹⁴ Indeed, according to ACOSS:

... it would be more appropriate to rely predominantly on a retirement income system which, by one means or another, raises the revenue progressively...and then pays it out at a flat rate universally.¹⁵

5.16 ACOSS further pointed out that the value of tax concessions on both contributions and fund earnings was likely to be four or five times greater for high income earners than for low income earners.¹⁶

5.17 Welfare and women's groups reflected a community concern that the growth of superannuation might lead to the attrition of the age pension. The Committee acknowledges there is concern that future governments might reduce the pension in economically difficult times.

5.18 This concern would be allayed if the Government, preferably with all party support, reiterated its determination to maintain the present relative value of the age pension.

¹⁰ Sub No 35, Appendix, pii.

¹¹ SG evidence, p 101.

¹² Sub No 126, p 14.

¹³ SG sub no. 29, p 17.

¹⁴ Evidence p 1938.

¹⁵ *ibid*, p 1369.

¹⁶ SG sub no. 23, p 2.

5.19 The Committee stresses that, in the long run, the greater the numbers who are independent of the age pension, the greater will be the scope for real increases in the age pension for those who must rely on it.

Casual, Part-Time, Temporary and Intermittent Employment

5.20 About 23 per cent of all employees work part-time only and, of these, three quarters are females.¹⁷

5.21 The retail, hospitality, entertainment and rural industries are, by their nature, served by disproportionately high numbers of casual and part-time employees. Coles-Myer, for example, stated that 32 per cent of its workforce were junior casuals and that, for the retail industry as a whole, 55 per cent were juniors, three-quarters of whom were casuals.¹⁸ A similar emphasis was reported by the Motor Inn and Motel Association.¹⁹

5.22 Figures supplied by the National Association of Personnel Consultants indicate that about 230 000 people work an average of six to seven weeks per year as temporary workers in clerical and technical support jobs, aggregating nearly 60 million hours of work. Their yearly earnings average about \$3 000.²⁰

5.23 Many workers do not stay in the work-force continuously throughout their working lives. A typical example would be women interrupting their labour force participation for child rearing for periods of varying length. Many would return to the workforce by way of part-time or temporary work before resuming full-time employment. Others may never rejoin the workforce.

5.24 The implications for superannuation of arrangements of this kind were brought home to the Committee by the experiences of three Tasmanian schoolteachers.²¹ Under the applicable legislation, each had to resign and rejoin both the service and the superannuation scheme as there were no provisions for maternity leave. Qualifying service under their superannuation scheme dates only from the latest commencement.

5.25 Mrs Cooley had, over 40 years, worked for 36 years, with maternity breaks totalling four years. Her superannuation entitlement is determined by service commencing after her second rejoining 24 years ago. Mrs Turner had service commencing in 1953 but, with periods of absence due to maternity, study and part-time employment, had only 22 years of qualifying service for superannuation. Mrs White, with 28 years of service and a 10 year break over 38 years, had only 23 years of qualifying service. The Committee notes that the Tasmanian Government is reviewing its superannuation schemes.

¹⁷ ABS Cat. No. 6203.0.

¹⁸ Sub No. 103, p 10.

¹⁹ Sub No. 110, p 1.

²⁰ Sub No. 104, pp 2-3.

²¹ Sub Nos 75, 87 and 88.

5.26 These cases raise other issues, such as vesting and preservation, with which the Committee will deal in its third and final report. They also illustrate, however, a major departure from the tacitly assumed norm of 40 or so years of continuous, full-time employment.

5.27 The Committee points out that not all casual, part-time and temporary workers are financially disadvantaged. The exceptions include secondary and tertiary students, many of whom will earn above-average incomes in full-time employment, as well as spouses whose partners are on high incomes with adequate superannuation and who may not wish to be fully employed. Others will hold casual or part-time employment as second or even third jobs, with their main full-time jobs covered by superannuation. Many who rely solely on casual work are able to earn incomes comparable with those in single, full-time employment.

Specific Disabilities

5.28 Another group of low-income earners of indeterminate size, comprising those with mental or physical disabilities, language problems, lack of training or other problems, will always have difficulty in holding down reasonably paid full-time jobs.

5.29 Mr Frank Fisher, of Monash University, gave the Committee a detailed account of the difficulties confronting the chronically ill, firstly in obtaining reasonable employment, and secondly in obtaining superannuation, especially when it is associated with life insurance cover.²² Whilst the SGL may go some way towards assisting such people, problems could arise if there is no way of breaking the insurance nexus.

5.30 To those with disabilities must be added those who are unemployed, for whatever reason, for part of their working lives.

5.31 The existence of these disadvantaged groups reinforces the case for the maintenance of an adequate level of social welfare, notwithstanding the expansion of superannuation coverage.

Comments

5.32 While those who earn low incomes over their working lives will be unable to receive superannuation benefits large enough to provide an adequate retirement income and would probably prefer to have the equivalent as a wage increase, it does not follow that they cannot accumulate benefits which will provide a useful supplement to the age pension. Under the income means test, a single pensioner may earn income of \$42 per week and receive a full pension. The corresponding figure for a married couple is \$74 per week. The Committee notes however, that, under current tax arrangements, there is every incentive for better paid workers to contribute to superannuation and few tax incentives for low income earners. The Committee acknowledges that the current arrangements include some inequity and need to be addressed.

5.33 The means-test free incomes referred to in the previous paragraph correspond roughly with lump sum benefits of \$30 to 35 000 and \$60 to 65 000 respectively. Superannuation within those ranges can therefore be an efficient means of supplementing the retirement incomes of disadvantaged individuals, provided that it is financed in a cost-effective manner.

Impact of Administration Charges on Small Contributions

5.34 From information obtained from a survey conducted by the Committee, administration charges in a typical industry fund are around \$35 per year for active accounts and \$20 for inactive accounts. In some schemes, life insurance, at about \$50 per year, is obligatory, in others optional. Tax at 15 per cent is payable on all contributions and also on fund income. Depending on the investment pattern, funds may reduce the incidence of income tax through dividend imputation on equities.

5.35 Table 5.1 illustrates the impact of these imposts, other than insurance, on contributions based on annual incomes of \$3 000 (the SGL threshold), \$5 400 (the tax threshold) and \$10 000.

Table 5.1

THE TAX AND CHARGE AS A PERCENTAGE OF SUPERANNUATION CONTRIBUTIONS					
	Percentage rate of contribution to superannuation				
	3%	5%	7%	9%	12% ^(a)
Case A: wage of \$3 000 pa					
Contribution (\$)	90.00	150.00	210.00	270.00	360.00
Less total of:					
– tax at 15% (\$)	13.50	22.50	31.50	40.50	40.50
– admin charge at 70¢/week ^(a) (\$)	36.40	36.40	36.40	36.40	36.40
	49.90	58.90	67.90	76.90	76.90
Tax and charge as percentage of contribution	55.4%	49.3%	32.3%	28.5%	21.4%
Case B: wage of \$5 400 pa					
Contribution (\$)	162.00	270.00	378.00	486.00	648.00
Less total of:					
– tax at 15% (\$)	24.30	40.50	56.70	72.90	72.90
– admin charge at 70¢/week (\$)	36.40	36.40	36.40	36.40	36.40
	60.70	76.90	93.10	109.30	109.30
Tax and charge as percentage of contribution	37.5%	28.5%	24.6%	22.5%	16.9%
Case C: wage of \$10 000 pa					
Contribution (\$)	300.00	500.00	700.00	900.00	1 200.00
Less total of:					
– tax at 15% (\$)	45.00	75.00	105.00	135.00	225.00
– admin charge at 70¢/week (\$)	36.40	36.40	36.40	36.40	36.40
	81.40	111.40	141.40	171.40	171.40
Tax and charge as percentage of contribution	27.1%	22.3%	20.2%	19.0%	14.3%

Note: (a) Attracts 15 per cent contribution tax on first nine per cent only.

5.36 At the initial rate of contribution of three per cent for award and SGL superannuation, tax and charges range from 27 per cent to 55 per cent of contributions; at five per cent from 22 per cent to 39 per cent; at seven per cent from 20 per cent to 32 per cent; and at nine per cent from 19 per cent to 28.5 per cent. If, in addition, insurance premiums are deducted, the net sums invested are negligible.

5.37 Mr S R Mathews, who has a small business but supplements his income by taking regular casual work, told the Committee that he had a long-standing arrangement for private superannuation. Following the introduction of award superannuation, he now finds himself a member of four industry funds, in each of which his account is charged with monthly charges for tax and administration, even though in some of them there are contributions for only one month per year. Life and disability cover are charged against each of the four accounts, reducing the superannuation coverage to negligible proportions. There is provision for consolidation in such cases, but there is a clear need for better education and communication.²³

5.38 Mrs M Belshaw, a part-time clerical worker, forwarded documentation showing that, at current levels, deductions against her account could actually exceed her contributions. After 18 months, her vested contributions amounted to a mere \$11. Her daughter's account was reduced to nil by charges on \$91 of contributions.²⁴

Employer Costs

5.39 As was to be expected, employer organisations were critical of the additional labour and administrative costs imposed on them, particularly during the current recession. Employers were also critical of the 'double jeopardy' consequent upon the differing requirements of award and guarantee superannuation. Whereas awards had varying thresholds for admission to superannuation, such as a qualifying periods of employment and/or minimum hours or earnings, the SGL legislation sets its own standard of \$250 earned in any month. It is therefore possible to comply with an award while being in breach of the Act, or to comply with the Act while being in breach of an award.

5.40 Mercers suggested that a solution to this problem could be found by abolishing all award superannuation and relying totally on the SGL.²⁵ Such an arrangement would avoid the possibility of awards failing to keep pace with the progressive increases in contributions set out in the SGL legislation.

5.41 The Queensland Minister for Health drew the Committee's attention to what will, in his view, be an unwarranted cost increase with unintended side-effects.²⁶ Most public hospitals employ visiting medical officers for a few hours per week. The doctors are in private practice for the bulk of their time and, as they are self-employed, make their own superannuation arrangements. The State Government will now have to provide additional

²³ SG Sub No. 10.

²⁴ Sub no. 36, pp 1-5.

²⁵ SG Sub. No. 9, p 2.

²⁶ SG sub no. 49.

superannuation cover of five per cent for them, irrespective of the extent of their private cover. Moreover, the provision of such cover by their employer will negate the doctors' rights to claim deductions for their self-financed cover.

5.42 The Institution of Engineers pointed out that its members made extensive use of casual and contracted professionals and expressed concern at the resulting 'complexities and anomalies' which would become a 'nightmare to administer'.²⁷

Contribution Threshold

5.43 Under the SGL, employers are obliged to meet superannuation for virtually all employees in receipt of wages greater than \$250 per month. A number of witnesses drew the Committee's attention to this threshold.

5.44 The State Governments submitted that in the three per cent only award schemes there exists a high turnover of members employed as casuals on low rates of pay and that this was placing a heavy tax burden on these workers without furthering any retirement incomes objective. For example, in South Australia, where there are 130 000 members in the productivity scheme, 1 000 employees are paid out amounts less than \$620 monthly. In Queensland, where the minimum preservation level is \$500, more than half of workers leaving employment take their accumulations in cash.²⁸

5.45 When money is taken from a superannuation fund under these circumstances it attracts taxes and charges which approximate 53 per cent of contributions, whereas if it were paid as part of salary, for most low income earners, it would be taxed at 21.25 per cent.²⁹

5.46 The following example of a worker who earns \$300 a month for three months illustrates this point:

Total of 5% contributions	\$45.00
15% contribution tax is deducted	\$6.75
Admin charges of 50¢ per week (12 weeks)	\$6.00
Total deductions	\$12.75
Balance after charges	\$26.25
Plus interest @ 10% pa	\$ 0.33
Balance	\$26.58

²⁷ SG sub no. 13.

²⁸ SG evidence, pp 126-127.

²⁹ SG Sub No. 17, Attachment A, p 2.

5.47 If the member claims the amount in cash, he or she could receive \$20.93, after tax on Eligible Termination Payment (ETP).³⁰

5.48 On the face of it, a substantial raising of the threshold would considerably reduce both the wage and the administrative costs of employers – substantially in small businesses heavily reliant on casual and part-timers – without any significant impact on retirement incomes. The ACTU rejected this view and asserts that coverage should be universal.³¹ It proposed an earnings threshold of \$1 000 per year (\$83 per monthly) but, to reduce the extent of erosion by monthly charges, suggested that contributions in respect of earnings between the threshold and \$2 400 per year (\$200 per month) be paid annually to coincide with group certificate preparation.³²

5.49 The Committee notes that lower thresholds have the advantages of widening superannuation coverage while discouraging distortions in the labour market, such as a pronounced shift towards casualisation, against the disadvantage of higher costs to both the employer and the fund member. Higher thresholds are less costly to administer but may encourage job splitting by employers to avoid contributions, as well as reducing the spread of cover.

5.50 One way of maximising coverage while containing administrative costs would be to leave the threshold in the Bill unchanged but to allow contributions in respect of incomes up to, say \$12 000 per year (\$1 000 per month) to be paid quarterly. This has the potential to reduce administrative costs by two-thirds. The loss of interest income would be negligible.

5.51 Another possibility would be to raise the threshold while contributions rates are low and expenses proportionately high, and progressively lower it as contribution rates increase.

5.52 There may also be a case to be made for awards to be amended to provide for the exemption of junior, casual and part-time employees from compulsory death and disability insurance.

5.53 Another option which was canvassed by ASFA was that of issuing non-negotiable contribution credits. Under this proposal, members would aggregate credits from different employers and periodically deposit them in a fund of their choice.³³

\$500 000 Payroll Threshold

5.54 The other threshold under SGL which impacts on the depth of cover for many part-time workers is the \$500 000 large/small payroll threshold. The ACTU opposes having any threshold at all and further opposes it being raised to \$1 million. It believes

³⁰ *ibid*, p 1.

³¹ Sub No 106, pp 26-28,

³² *ibid*, p 31.

³³ SG evidence, p 145.

that if it were raised to this level, it would generally exclude firms employing less than 40 people. The ACTU argues that generally, employees in these small firms:

- are predominantly female;
- are low income earners; and
- have little access to over-award conditions.

5.55 The ACTU believes that to exclude employers with less than 40 workers would severely disadvantage employees in the weakest sectors of the economy.³⁴

5.56 The ACTU also drew the Committee's attention to a practice in the clothing industry which has been the subject of proceedings in the AIRC of altering company structures by acquiring shelf-companies and reducing each company's employment to a level below award obligations and thereby avoiding redundancy costs. The ACTU is concerned that this practice might be adopted to avoid SGL obligations.³⁵

5.57 Chapter 6 includes details of employers' attitudes to the \$500 000 payroll threshold issue.

Inactive Accounts

5.58 One of the inevitable legacies of casual and part-time employment is a mounting number of inactive accounts against which administration fees are debited, albeit at a lower rate than for active accounts. As noted in its first report,³⁶ the Committee recommended that a satisfactory way to overcome the problems of casuals who frequently change jobs and of inactive accounts, would be the establishment by the Government of a central fund into which the balances could be pooled and invested at minimum cost. Identification of beneficiaries could be facilitated by recording of a tax file or superannuation number against each account.

Ex-Workforce Coverage

5.59 The question of allowing taxation relief for superannuation contributions for those outside the work force was not extensively canvassed by witnesses. Most of those who did comment pointed out that the main beneficiaries would be the very rich who, in addition to financing ample, tax-subsidised superannuation for themselves, would be able to do the same for their spouses and even other relatives.

³⁴ SG sub no. 29, pp 12-13.

³⁵ *ibid*, attachment 5.

³⁶ *Safeguarding Super*, Canberra, June 1992, pp 81-83.