CHAPTER 11:

COVERAGE AND COMPLIANCE

Introduction

11.1 This chapter examines the scope of coverage required under the SG legislation, and the problems associated with superannuation for the self-employed. The extent of compliance with SG is also examined.

Coverage

Requirements

11.2 The *Superannuation Guarantee (Administration) Act 1992* (the SGAA) requires all employers to make contributions in relation to their employees. Some exemptions apply, including foreign executives with Class 2 temporary entry permits (Code 413) Schedule 3 Migration Regulations.[1]

11.3 Under the Superannuation Industry (Supervision) Regulations (the SIS regulations), superannuation accounts can only commence if a person is employed. This occupational nexus is retained until a person retires, although the SIS regulations allow contributions to be accepted by a superannuation fund in relation to a person for limited periods of unemployment. This occupational link has particular impact upon women and others with patterns of broken participation in the workforce and is explored in more detail in Chapter 3.

Statistics[2]

11.4 The most recent data from the Australian Bureau of Statistics, as at November 1993, reveals that there were 7.638 million persons aged 15 to 74 in employment, of whom 6.145 million (over 80%) had superannuation coverage.

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1 Australian Taxation Office, *The Superannuation Guarantee, An Employer's Guide*

2 Australian Bureau of Statistics, *Superannuation Australia November 1993,* Catalogue No. 6319.0

Table 11.1: Superannuation coverage of employed persons

COVERAGE	FEMALES	MALES
employers	42%	61%
employees	86%	91%
self-employed	23%	43%

Source: Australian Bureau of Statistics, *Superannuation Australia November 1993,* Catalogue No. 6319.0

11.5 Nearly half of all employed persons with superannuation coverage (2.903 million) had their employer paying all their superannuation contributions.

The self-employed

11.6 Taxation legislation has historically allowed self-employed persons to claim tax deductions for personal superannuation contributions. Prior to 1 July 1991, if a self-employed person received any employer-financed superannuation support, they lost their eligibility for these tax deductions. From 1 July 1991, a person who received contributions pursuant to *award* superannuation ('superannuation agreement contributions') could retain this tax deduction if the income from which those contributions related accounted for less than 10 per cent of the person's assessable income ('the 10 per cent rule').[3]

11.7 The taxation treatment of personal contributions was again changed on 1 July 1992 to allow for the introduction of the SG arrangements.[4] From 1 July 1992, the reference in the 10 per cent rule to industrial agreement contributions was broadened to refer to any employer-financed superannuation, which includes award superannuation, SG or any other employer-financed superannuation.

11.8 The 10 per cent rule had been designed to allow persons who were substantially self-employed with minimal employer superannuation support to receive the same levels of tax deductions for personal contributions as self-

3 Definition of "unsupported eligible person" in subsection 82AAS(1) of the *Income Tax Assessment Act 1936* , inserted by section 17 of SR No 80 of 1992

4 Subsection 82AAS(3) of the *Income Tax Assessment Act 1936*

employed people and employees without employer support.[5] Examples include some professionals such as doctors or lawyers receiving fees from lecturing, and primary producers who supplement their incomes during drought years.

11.9 A number of Visiting Medical Officers, truck drivers, building designers, and jockeys submitted that as self-employed persons they are adversely affected. The consequences of the self-employed receiving more than 10 per cent of their income in respect of which employer-financed superannuation is provided, is the loss of tax concessions for personal superannuation contributions.

11.10 It was put to the Committee by the Australian Medical Association that loss of tax deductions in such circumstances could undermine these persons' security in retirement by serving as a disincentive to provide for their own retirement.[6] This view needs to be balanced against other factors, such as anomalies that may have arisen if the tax arrangements had remained unchanged.

11.11 Mr Glen Jolly and Mrs Christine Jolly, of Brookfield in Queensland, were unhappy with the tax incentives for the self-employed and for employees. They also considered that the current rules discriminated against employees who were unable to persuade their employers to deduct contributions from their pay in the form of a salary sacrifice. Furthermore, Mrs Jolly had ceased work some years ago and her husband was unable to split his retirement benefits with her to reduce the tax burden on their single income situation. They advocated tax deductibility for all contributions to a maximum amount, removing tax payable on excess benefits, and a greater tax free component where there is a single accumulation to fund a family's retirement.[7]

Local government councillors

11.12 Subsection 12(10) of the SGAA defines a person who holds office as a member of a local government council as an employee of the council. Under the SGAA, the council is therefore obliged to make contributions on that person's behalf. The Committee received 19 submissions, 18 of which were from local government councils, opposing this provision.[8]

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5 Taxation Laws Amendment Bill (No 2) 1992, 2nd Reading Speech, 2 April 1992, Weekly House Hansard p 1767

6 SGCREV Sub No 48

7 SGCREV Sub No 110

8 SGCREV Subs No 9,10,11,12,15,17,18,25,30,35,37,38,39,43,46,49,51,62 and 69

11.13 The remaining submission in relation to local government councillors was from Coopers and Lybrand on behalf of the Municipal Association of Victoria and the Australian Local Government Association. It questioned the application of the:

- the 'control test', which asks whether the employer has the right to control how, when and where the work is done (even if control is not actually exercised);[9] and
- the 'integration test', which examines whether the individual's services are an integral part of the employer's business or merely ancillary to it;[10]

in determining employer/employee relationships. Their submission cited the *Local Government Act 1989* which 'expressly excludes employees of councils from standing for election to the council by which they are employed'. [11]

11.14 The Treasurer subsequently announced that the requirement for local government councils to make 'relatively minor superannuation contributions in respect of the meeting and travelling allowances that they pay to councillors' would deny:

> many self-employed councillors the tax concessions they could otherwise claim in contributing to their own personal superannuation schemes... this effect is particularly harsh on local councillors who for all intents and purposes effectively volunteer their services to the community.[12]

11.15 The Treasurer consequently announced that:

> The Government has therefore decided to amend the SGAA with effect from 1 July 1993 to exempt from its ambit income which elected local Government Councillors derive in performing their duties as Councillors. However, this measure will not preclude Councils from continuing to provide superannuation support on behalf of Councillors in circumstances, for example, where Councillors are effectively full-time employees.[13]

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9 Australian Taxation Office Superannuation Guarantee Ruling 93/1

10 Australian Taxation Office Superannuation Guarantee Ruling 93/1

11 SGCREV Sub No 49

12 The Hon Ralph Willis, MP, Treasurer, *Superannuation Policy - Statement of Measures*, 28 June 1994, p22

13 The Hon Ralph Willis, MP, Treasurer, *Superannuation Policy - Statement of Measures*, 28 June 1994, p22

11.16 The Association of Superannuation Funds of Australia (ASFA) considered the exclusion of local government councillors' allowances to be a 'sensible protection of the tax concessions for self-employed people who act in this largely honorary capacity'.[14] ASFA pointed out that:

> there are a large range of similar positions in many statutory authorities and the office-holders in such cases are equally deserving of this concession. While this adds a further complexity, we strongly believe this exemption should be extended to the full range of similar, largely honorary, positions.[15]

11.17 While the Committee supports this position in principle, it does not favour initiatives which look to extend SG exemptions, unless there are compelling reasons to do so. It would seem likely that the exemption foreshadowed by the Treasurer in respect of local government councillors could conceivably be extended to other affected groups, should that be appropriate.

Jockeys

11.18 The National Racehorse Owners' Association (NROA) and the Victorian Jockeys' Association (VJA) forwarded submissions, the former giving evidence to the Committee expressing concern that jockeys' remuneration would be subject to SG contributions.[16] This was determined in SG Determination 93/13. Jockeys' remuneration is calculated in relation to:

- $60-$65 riding fee; and
- a percentage of the stakemoney.

11.19 The NROA, however, asserts that:

> Except for subsection 12(8) of the superannuation guarantee legislation of 1992, everyone regarded the jockey as the paradigm of a self-employed person, unless he happened to be associated with a stable[17]

and that is 'wrong for the superannuation of jockeys to be paid out of the hard earned money of our members'.[18]

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14 SGCREV Sub No 5

15 SGCREV Sub No 5

16 SGCREV Subs No 56 & 88 respectively, Evidence pp 209-223

17 Kurt Esser, Evidence, p 219

18 Kurt Esser, Evidence, p 211

11.20 In their submission to the Committee, the VJA described jockeys as:

> self-employed individuals who offer their experience and skill to the owner of the racehorse to ensure that the horse participates in a race to the best of the horse's ability.[19]

11.21 The Treasurer's Statement of 28 June 1994 announced that prize money won by sportspersons and others would be exempted from the SG requirements from 1 July 1993, but that the definition of prize money:

> will not be extended to appearance fees, commissions, incentive payments and regular payments in the nature of salaries. Remuneration of this kind will continue to be subject to the requirements of the SG legislation.[20]

11.22 Although the Treasurer's Statement foreshadowed an exemption from SG of winners of prize money, it seems that jockeys do not fall into this category as prize money is paid to the horse's owner. It has been submitted that confusion over this issue has led to high levels of non-compliance:

> owners are not paying into any fund at all... they are not complying at the moment pending further inquiries made by this committee and further advices they receive from time to time. At the moment, it is fair to say that everything is on hold, partly for the reason that the arrangements are so burdensome and difficult.[21]

11.23 Superannuation Guarantee Determination 93/13, which was released by the Commissioner for Taxation on 11 November 1993, makes it clear that a jockey's employer is the person who is liable to make the payment to the jockey. In most cases this would be the owner or the trainer. Both the race fee and the share of the prize money earned by a jockey are paid by the racing club as agent for the owner or trainer. Payments made by an employer are subject to SG.

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19 SGCREV Sub No 88

20 The Hon Ralph Willis, MP, Treasurer, *Superannuation Policy - Statement of Measures*, 28 June 1994

21 Kurt Esser, Evidence, p 215

Visiting Medical Officers

11.24 Submissions and evidence from the Australian Medical Association (AMA), the Port Macquarie Division of General Practice Ltd, and the NSW Rural Divisions Co-ordinating Unit Ltd raised similar concerns to those of the jockeys.[22]

11.25 The AMA advised that state public hospitals engage specialists and general practitioners (Visiting Medical Officers or VMOs) who are also in private practice (and hence self-employed) to provide medical services to public hospital Medicare patients. The AMA submitted that income received by VMOs from their work in public hospitals generally constitutes a small proportion of their total income. Many of these VMOs make personal contributions to private superannuation schemes.

11.26 If, however, income from hospitals exceeds 10% of their gross income, the tax deductions from superannuation contributions, which are available to them as self-employed persons, are no longer available because of subsections 82AAS(2)&(3) of the *Income Tax Assessment Act 1936.*

11.27 The AMA submitted that this can put VMOs at a significant disadvantage in relation to other practitioners who gain tax concessions for superannuation contributions, and act as a disincentive for practitioners to enter into, or remain in, public hospital appointments.[23]

11.28 The NSW Rural Divisions Co-ordinating Unit Ltd submitted that the tax 'repercussions' of the 10 per cent rule could lead to 'general practitioners leaving country areas where already there is a major problem in recruitment and retention of doctors'.[24]

Building Design Professions

11.29 The Australian Council of Building Design Professions Ltd (BDP) expressed similar reservations to those expressed by the AMA about the operation of the 10 per cent rule and its impact on the tax concessions available

22 SGCREV Sub No 48, Evidence pp 457-470; SGCREV No 111 and SGCREV Sub No 113 respectively

23 SGCREV Sub No 48

24 SGCREV Sub No 113

to self-employed persons making personal superannuation contributions.[25] The Council submitted that 'BDP is concerned that this situation would also apply to independent contractors in other industries such as the building design profession'.

11.30 BDP recommended that the Government establish 'an equitable system where everyone is entitled to the same tax deductibility of contributions up to a certain limit regardless of the source of income'.[26]

Transport Workers

11.31 Mayne Nickless Limited and the Australian Road Transport Industrial Organisation (ARTIO) expressed concerns about the impact of SG upon the use of the sub-contractors they employed in road transport operations.[27] Mayne Nickless supported SG coverage for this class of worker but raised administrative concerns, whereas ARTIO expressed opposition to an SG liability for these workers.

11.32 Mr John Davies, of Mayne Nickless, advised the Committee that the company had problems with the administrative complexity of the SG rather than with the obligation.[28]

11.33 The company submitted that it had agreements with independent contractors who, for the main part, perform tasks identical to those performed by employees.[29] Prior to the advent of the SG, superannuation arrangements had been the same for both independent contractors and for employees, where superannuation support by the employer had been a flat rate based upon the Base Wage. However, the introduction of SG requires employer contributions for independent contractors to be based upon ordinary time earnings. Accordingly, the company now:

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25 SGCREV Sub No 63

26 SGCREV Sub No 63

27 SGCREV Subs No 44&50 respectively; Evidence pp 148-158 & pp 166-183 respectively

28 Evidence, p 149

29 SGCREV Sub No 44

> finds it has two classes of worker, who perform the same job but whose superannuation support is different. The situation creates unrest for us and has the potential for damaging industrial action.[30]

11.34 Mayne Nickless recommended that if an award employee and an independent contractor are performing the same job, the SG earnings base applicable to the employee should also be applicable to the independent contractor.[31]

11.35 Mayne Nickless also expressed problems with the Tax Office Determination 93/6, which attempted to explain when a courier driver was to be considered an employee under subsection 12(3) of the SGAA. It submitted that courier drivers are paid at a parcel rate and that it was impossible to distinguish how much of that rate is for the labour and how much for the vehicle.[32] Mayne Nickless recommended that a courier receive the same amount of superannuation support that an employee would receive in the circumstance that the employee were supplied with a vehicle.

11.36 Although the Committee accepts Mayne Nickless' assertion that some standardisation was necessary, it is considered to be a matter to be settled in the industrial relations arena.

11.37 ARTIO submitted that the road transport industry makes extensive use of sub-contract drivers to provide transport services.[33] Sub-contractors may be sole or corporate traders. The corporate structure of the latter 'can be many and varied', operating as incorporated companies, trusts or partnerships'.[34] As Superannuation Guarantee Determination 93/6 exempts a prime contractor from SG obligations when dealing with sub-contractors who operate through a family company, trust or partnership, ARTIO argues that there is an incentive for prime contractors to deal only with incorporated sub-contractors, as it is administratively easier and cheaper. Consequently this has the effect of 'discriminating against sole traders, as prime contractors refuse to engage sub-contractors unless they are incorporated'.[35]

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30 Evidence, p 152

31 Evidence, pp 152-3

32 Evidence, p 153

33 SGCREV Sub No 50

34 SGCREV Sub No 50

35 SGCREV Sub No 50

11.38 The administrative difficulties of dealing with sole traders stems from the difficulties a prime contractor encounters in determining whether or not a sole trader should be treated as an employee, firstly by applying the 'control test', secondly by applying the 'integration test', and finally by determining under subsection 12(3) of the SGAA whether a person 'is working wholly or principally for the labour of the person'.[36]

11.39 ARTIO maintains that it is sometimes extremely difficult for a prime contractor to determine the labour content of a contract, as operating and capital costs, which would be deducted from the contract value to determine labour costs, 'are known only to the sub-contractor'.[37] A further uncertainty would be that 'there is no way of telling whether the value determined by the prime contractor will be the same as that calculated by the Taxation Office'[38]

11.40 ARTIO proposes that administrative costs could be reduced and consistency and fairness in sub-contract rates be achieved through establishing a scheme parallel with the Prescribed Payments Scheme whereby a sub-contractor would need to obtain an SGC Exemption Certificate from the Tax Office to exempt a prime contractor from being required to make SG contributions.[39]

11.41 The Committee agreed that there was some problems involved with the different categories of contractors within the industry, but did not consider that SGC Exemption Certificates were an appropriate solution to the problem. Mr Noel Kimberley, of the Victorian Road Transport Association, commented in evidence that subcontractors:

> are a broad group of people. There is, on the one hand, a group of highly organised independent contractors who are engaged by a number of larger companies who are called tied, committed, dedicated or whatever. They have an industrial perspective that they want their prime contractors to pay it. On the other hand there are thousands of these other people operating out there who work itinerantly... to have their own arrangements in place... [over which they wanted to retain control]. That is the way it should be, that these people take a choice.[40]

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36 SGCREV Sub No 50

37 SGCREV Sub No 50

38 SGCREV Sub No 50

39 SGCREV Sub No 50

40 Evidence, p 181

11.42 The Committee considers that this issue is essentially also one to be resolved in the industrial relations arena.

Non-resident workers

11.43 A number of submissions were received concerning the efficacy of applying the SG requirements to overseas residents working temporarily in Australia.

11.44 Arthur Anderson & Co submitted that application of the SG scheme produced results which were impractical when applied to non-residents working temporarily in Australia.[41] An example that was given was where a non-resident company employed non-residents to work in Australia on a cyclical basis. Because the non-resident employees did not have the necessary visas (executive overseas visa code 413) to qualify for exemption from the requirements of the SG scheme, the company was required to make contributions on behalf of those employees.

11.45 Arthur Anderson & Co also submitted that:

- it was not cost effective to enrol the employees in the company's superannuation fund;
- the administration is onerous to both employers and employees;
- the employees will only derive a minimal benefit as they will not remain in Australia; and
- if the company does not make contributions and becomes liable for the shortfall levied by the ATO, then:

  (i) the ATO forwards SG vouchers to the employees who are required to nominate a superannuation fund in Australia into which the SG amount can be paid;

  (ii) the money held by the ATO is then paid into the superannuation fund; and

  (iii) the employees then withdraw the money, incurring all associated fees, when they leave Australia.

41 SGCREV Sub No 55

11.46 Mr Richard Friend, of Arthur Anderson & Co, considered that:

> it does not really achieve any of the SGC objectives from my understanding because it is not money going to fund anybody's retirement because they are not retiring in Australia.[42]

11.47 Arthur Anderson & Co recommend that an exemption be inserted in section 27 of the SGAA to apply to all salary and wages paid to non-residents, at least for those working in Australia for less than two years.

11.48 Sedgwick Noble Lowndes made a similar submission.[43] They argue that:

> the basic purpose of the Superannuation Guarantee is to ensure a systematic build up of funds for working Australians so that ultimately the bulk of the workforce is not reliant (at least not totally) on the public purse for income in retirement. To that extent the Australian Government does not need to be concerned with overseas residents who may be working in Australia for short period, either as employees or contractors...
>
> The inclusion of overseas employees on (generally short term) secondment to Australia almost always involves the continuation of pension fund provisions by the overseas company. The provision of additional superannuation benefits through the superannuation fund conducted by the Australian subsidiary is therefore inappropriate and unnecessary. From our experience such employees will not generally receive Superannuation Guarantee related benefits as these benefits will be integrated with their overseas benefits or offset against remuneration earned in Australia.
>
> The net outcome is additional non productive administration and is not consistent with the purpose for which the Superannuation Guarantee arrangements were established.[44]

11.49 Sedgwick Noble Lowndes recommended that the application of the SG exemption to overseas residents should be extended to include arrangements under Entry Permit Classes 411, 414, 417, 420 and 421.

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42 Evidence, p 426

43 SGCREV Sub No 52

44 SGCREV Sub No 52

11.50 William M. Mercer Pty Ltd considered that as most overseas executives working in Australia retire overseas, it seems pointless to have to provide them with compulsory superannuation which can in any event be cashed when they leave Australia permanently. Most would have adequate superannuation schemes in their own country.[45]

11.51 Mrs Finch, of Cronulla in NSW, submitted that SG for non-residents was a loophole hurting employers, maintaining that although such employees are 'not entitled to receive the tax free threshold... to claim any dependents' allowance... to claim for supportive benefits... [or] to have a Medicare card', their employer must pay SG on their behalf.[46] Furthermore, when the worker's work permit expires and they leave the country, they take the benefits arising from those contributions with them. Mrs Finch remarked that 'we may as well give them a few hundred dollars on the day they leave our employment with our best wishes'. She questioned the rationale for contributing to workers' retirement, only to have the benefits taken out of Australia by non-residents.

11.52 Finikiotis & Father, public accountants of Bondi Junction in NSW, queried the inclusion of non-resident entertainers within the SG requirements.[47] Included with their submission were copies of numerous complaints by industry employers, including the Australian Opera, Conrad Jupiters, the Entertainment Industry Employers Association, the Gordon Frost Organisation, Musica Viva and others. These grievances suggested that the SG requirements for non-resident entertainers are administratively cumbersome, expensive, inappropriate, and lead to negotiation difficulties between promoters and overseas artists which in turn generates 'a poor reflection on the Australian income tax system at an international level'.[48]

11.53 The Committee basically endorsed the concerns raised in relation to overseas workers. As the SG arrangements were designed to provide for or to supplement the retirement benefits of Australians, there seemed to be little rationale for legislating for overseas workers temporarily employed in Australia to be subject to SG obligations.

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45 SGCREV Sub No 57

46 SGCREV Sub No 90

47 SGCREV Sub No 93

48 SGCREV Sub No 93

11.54 The essential point seems that in these circumstances, it is extremely unlikely that benefits arising out of SG would ever be used for their intended purpose - that of providing benefits in retirement, as overseas workers with accrued SG entitlements would cash these in as benefits when leaving Australia permanently. If anything, early cashing in of SG benefits seems to defeat the purpose for which SG was implemented.

Recommendation 11.1

The Committee recommends that the Government extend exemptions from the requirements of SG to all non-resident workers where there is sufficient evidence that superannuation is being paid in the country of residence.

Conclusion

11.55 The evidence and submissions to the Committee highlights a number of difficulties inherent in the SG as it applies to persons whose self-employment status is indeterminate or ambiguous:

- self-employed persons with personal superannuation arrangements have a stake in maintaining their status as self-employed persons because they maintain tax concessions on personal contributions;
- potential employers have a stake in maintaining contractors' status as self-employed because it exempts them from SG liabilities and administration;
- self-employed persons without personal superannuation are not covered under SG; and
- under the 10 per cent rule, a person would be able to attract tax deductions on personal contributions, even though most of their income is derived from employers, as long as the income received from employers within any given month is below the $450 threshold.

11.56 The issues which arise out of these problems are as follows:

- should the 10 per cent rule be changed?
- should the self-employed be subject to SG obligations? and, if so,
- what level of contributions should they be required to make, and by when?

The 10 per cent rule

11.57 The Committee notes the problems encountered by the groups discussed above as a result of the 10 per cent rule, but considers it inappropriate to recommend alteration of that provision. Ten per cent appears to represent an arbitrary negotiated solution to the problem of small employer contributions without it representing or referring to any particular yardstick or benchmark. It appears to the Committee to represent a compromise which enables self-employed people a margin of error to plan their financial affairs without being disrupted by the threat to the tax concessions to which they would be otherwise entitled posed by *any* small, and perhaps unexpected employer contributions.

11.58 The Committee notes that in some cases, 10 per cent of income amounts to a substantial amount of money, and a concomitantly substantial amount of employer-provided superannuation. At the very least, the ten per cent rule eliminates the 'sudden tax death' syndrome to which the self-employed were vulnerable prior to 1991.

Superannuation Guarantee for the self-employed

11.59 The Association of Superannuation Funds of Australia (ASFA) commented in evidence that:

> It is doubtful that the current voluntary incentive approach which applies for self-employed people will ever achieve a satisfactory coverage...
>
> Arguably attainment of adequate and sustainable retirement income levels across the board requires comprehensive superannuation coverage of the workforce. From a broad retirement incomes policy perspective, therefore it seems appropriate to extend compulsory SG coverage to self-employed persons.
>
> However, there are a range of practical issues... which make mandating of self-employed persons' contributions highly problematic.

> One of the most critical of these is the issue of determining an appropriate earnings base... there is obviously no concept of salary or wages or ordinary time earnings which can be used.
>
> Thus the concept of "net business income" may be a possible earnings base.[49]

11.60 ASFA accepts that the policy arguments for mandating superannuation extends to some degree to the self employed, but considered that there are 'very significant practical issues which would need to be addressed in detail before the Government took any firm steps to introduce such a measure'.[50]

11.61 The Committee recognises that the issues to be resolved before a mandatory SG regime for the self-employed can be introduced are of immense complexity. It considers that, in principle, the problem is not insurmountable and that an innovative approach needs to be employed to resolve what could become an intractable issue which threatens the integrity of the SG regime.

11.62 The Committee proposes that as a self-employed person is not located within an employer/employee relationship, it should be possible to provide additional incentives which are linked to the occupational nexus itself.

11.63 A recent survey commissioned by the Australian Consumers Council revealed that most Australians consider superannuation to be a poor investment.[51] In addition, the Committee is mindful of the burdens imposed upon the self-employed, and small businesses generally. In this context, the Committee considers that the incentives for the self-employed to invest more in their superannuation should be structured to make superannuation a highly competitive investment.

Compliance

11.64 In its report to the Committee, the Australian Tax Office (ATO) advised that awareness and compliance with the Superannuation Guarantee 'is at a high level'.[52] The ATO also advised that over 90% of employers claimed to have superannuation arrangements for all their employees in August 1993 compared to 64% in March 1992:

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49 SGCREV Sub No 5

50 SGCREV Sub No 5

51 Australian Consumer Council, *Super Day Super Sa*, - The Results of the Consumer Superannuation Phone-In , 23 November 1993; published 1994

52 SGCREV Sub No 84

> Audits confirm this position, with over 90% of employers paying superannuation for their employees, although [only] about 80% are actually making enough superannuation contributions.
>
> Employers who erred in the Superannuation Guarantee obligations are doing so by an average of less than $250 per employee. The most frequently occurring shortfall amount reflected in audit activities is about $30.[53]

11.65 The ATO also advised that 95% of employers were providing superannuation for 'some' of their employees. This level of success in achieving compliance by employers reportedly prompted a market researcher for the ATO to comment that compliance was at 'saturation level'.[54] The Committee understands that this level of compliance compares extremely favourably with compliance with other tax legislation, particularly the *Income Tax Assessment Act 1936* and the Child Support legislation.

11.66 The ATO also reported that there are three levels of employer compliance with the SGAA:

- employers who complied;
- employers who tried to meet their obligations but failed; and
- employers who, either because of lack of awareness or will, made no effort to comply.[55]

11.67 The problems with compliance often seemed to centre upon confusion about employees' earnings bases as well as employers overlooking casual and temporary workers.

11.68 One submission which represents organisations/employers who try to meet their obligations but may fail, was forwarded by the Adult and Community Education (ACE) Council. It submitted that many organisations within the ACE sector have great difficulty in complying with the SG requirements because of the associated costs, and administrative and accounting difficulties, which an under-resourced sector encounters in attempting to maintain accurate records for remittance of small amounts of money to funds.[56] The lack of resources also made it difficult for these organisations to find complying superannuation funds.

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53 SGCREV Sub No 84 Supplementary

54 SGCREV Sub No 84 Supplementary

55 SGCREV Sub No 84 Supplementary

56 SGCREV Sub No 64

Even where an employee has a superannuation account 'ACE organisations with insufficient administrative infrastructure have mostly not been able to accommodate payments to an employee's individual existing scheme'.

11.69 The ACE Council expressed reservations about the operation of the current legislation, particularly in relation to 'the not-for-profit, government supported NSW ACE sector'.[57]

11.70 Both the ACE Council and the Australian Chamber of Manufactures expressed concerns about employees who were unwilling to participate in superannuation funds established for the purposes of SG.[58]

11.71 Notwithstanding the favourable SG compliance figures, the Committee heard evidence of non-compliance. Mr Harry Sugars, AWU (SA), reported superannuation non-compliance associated with under award payments by some fruitgrowers. In the school holiday season when apricots are picked, Mr Sugars stated that he would deal with 'anything up to 15 or 20 cases' of under award payment and associated superannuation non-compliance in the South Australian Riverland District.[59]

11.72 The Committee agreed that the ATO's Superannuation Guarantee Project had been extremely successful in communicating the requirements of SG to the community, particularly employers, and noted that the ATO would be preparing further strategies for the 1994-95 year of income.

11.73 The Committee notes that 'compliance activities are now being targeted toward risk areas. These include employers of contractors or casual and part time employees'.[60]

Dumping SG contributions

11.74 Jacques Martin Industry submitted that a problem encountered by that organisation, as the largest industry fund administrator, is that:

> many employers often simply "dump" money in the funds to meet Superannuation Guarantee requirements and provide a minimal amount of information regarding the relevant employees [to the funds]... many casual

57 SGCREV Sub No 64

58 SGCREV Subs No 61 & 64

59 Evidence, p 665

60 Commissioner for Taxation, *Annual Report 1993/94*, p 75

> members are accumulating small benefits of which they are unaware, and therefore aggregation of benefits as they change employers and industries is prevented.
>
> This practice also adds significantly to fund administration costs through efforts necessary to try and obtain sufficient details from employers.[61]

11.75 Jacques Martin suggested that the remedy would be:

> having a statutory requirement for employers making SG contributions to be required to provide an appropriate amount of information, ie. the employer's name, date of birth, last known address **and** TFN. This would permit easy identification and aggregation of employees' multiple accounts.[62]

11.76 It was not clear to the Committee why such an obligation upon employers should be explicitly statutory. A fund, complying or otherwise, is not obliged to open new superannuation accounts at an employer's request. If the information that an employer supplies is inadequate for the purposes of proper fund administration, then the fund is clearly free to refuse to accept those contributions until the necessary information has been made available. The onus to upgrade inadequate information then rests with the employer who remains under obligation to meet the requirements of the SGAA within the statutory time frame.

61 SGCREV Sub No 92

62 SGCREV Sub No 92