

SUPERANNUATION UPDATE

Changes as at 1 July 2008

Presented by:

Geoff Bull

Manager Legal and Migration Services

AMMA

Superannuation Update



- ▶▶ *Superannuation Guarantee (Administration) Act 1992 (SGAA)*
- ▶▶ *Superannuation Charge Act 1992 (SGA) (Levy)*
- ▶▶ *Superannuation Laws Amendment (2004 Measures No. 2) Act 2004 (Slam Act)*

History of Compulsory Superannuation

- ▶▶ 1986 - ACTU claim in National Wage Case.
 - Awarded 3% superannuation by agreement

- ▶▶ 1991 - ACTU claim for further 3% NWC
 - NWC adjourned AIRC asked Commonwealth to convene superannuation conference.

- ▶▶ 1992 - Labour Government introduced by legislation compulsory superannuation.

Employer Superannuation Contribution



- ▶▶ *SGAA Ordinary time earnings* = Earnings in respect of ordinary hours of work

or

- ▶▶ *SGAA Notional earnings base* = Earnings by which employer contribution is to be calculated in accordance with industrial award.

- ▶▶ SLAM Act 2004 removes all reference to notional earnings base.

Ordinary Time Earnings



What are “*Ordinary Time Earnings*”

1) Hours Ordinarily Worked

v's

2) Hours at Ordinary Rates

Does is really matter?

CASE LAW

- 1974 High Court - *Kezich v Leighton Contractors* (WA Workers Compensation Act). “*Ordinary Hours*” given natural meaning; regular, normal customary and usual.
- 1989 High Court – *Catlow v Accident Compensation Commission* (Vic Workers Compensation Act) “*Ordinary time rate of pay*”. Excludes overtime and not a reference to the number of hours usually worked.
- 1993 High Court – *Scott v Sun Alliance Australia* (Tas Workers Compensation Act) “*Ordinary rate of pay*” refers to rate fixed by industrial award or agreement not the hours worked.

CASE LAW (continued)

- 2002 Federal Court - *Quest Personal Temping Pty Ltd v Commission of Taxation* – “ordinary hours of work” in SGAA means hours worked on a habitual basis. *Kezich* followed.
- 2003 High Court - *Australian Communication Exchange v Deputy Commissioner of Taxation*. “Ordinary working hours” in Qld Award excluded overtime.
- 2007 Federal Magistrate - *Moloney v Beverage Engineering s.661 Workplace Relations Act 1996* “ordinary hours” does not include overtime adopted *Catlow*.

ATO APPROACH

- 1994 **Ruling SGR 94/4 SGAA** - Overtime payments are excluded from *ordinary time earnings* no matter how often an employee works overtime.
- 2007 **Interpretive Decision 2007/73. SGAA** – Regular overtime hours are *ordinary hours*
- 2008 **Administratively Binding Advice Feb 2008** Hours in excess of “*ordinary*” in Certified Agreement are ordinary hours from 1 July 2008. *Kezich* relied on.

OTHER APPROACHES



AIRC

2002 Working hours case – *distinction between ordinary hours and overtime is one deeply embedded in awards and agreements.*

ABS

Weekly ordinary time earnings *excludes overtime.*

Long Service Leave

“*Ordinary pay*” means remuneration for hours calculated on the ordinary rate and excludes overtime.

AMMA ACTION



- ▶▶ Meeting with Office of Minister for Superannuation.
- ▶▶ Minister's compromise.
- ▶▶ Written request to Minister.
- ▶▶ Federal Court application.
- ▶▶ What to do?