

**Senate Select Committee on
Superannuation and Financial Services**

**Main Inquiry
Reference (c)**

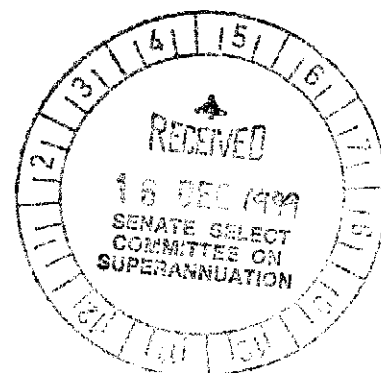
Submission No. 2

Submittor: Mrs Patricia A. King
42 Wheeler Parade
DEE WHY NSW 2099

30 November 1999

42 Wheeler Parade
Dee Why, 2099

The Secretary
Senate Superannuation and Financial Services
Select Committee
Parliament House
CANBERRA ACT 2600



Dear Secretary,

Patricia A. King
Superannuation Guarantee Contributions

I write in respect to Item (c) "enforcement of the Superannuation Guarantee Charge" nominated in press advertisements as a matter which the Senate Select Committee On Superannuation And Financial Services will address in it's announced inquiry.

I have experienced the Superannuation Guarantee obligations of employers; both as an employer and an employee.

As an employer, I accepted the advice of the Australian Taxation Office in it's 1992 publication titled "An Employer's Guide" to the effect that "As an employer, you will have to pay contributions to a superannuation fund on behalf of your employees, or pay a Superannuation Guarantee Charge." As an employee, I have found, since introduction of the legislation on 1 July 1992, that, with one exception, all of my employers honoured their obligation to pay contributions on my behalf.

In respect to that one exception, I enclose copies of self-explanatory correspondence to that employer - Work Mode Uniform Manufacturers; and copies of correspondence to and from, the Australian Taxation Office and the Department Of Workplace Relations and Small Business.

You will note that the date of the response to me from the Australian Taxation Office is 20 January 1999. I have not yet received the superannuation payment "voucher" referred to in that correspondence; nor have I received any further advice indicating that any action has, in fact, been taken by the ATO on my behalf.

In the Australian Financial Review of 6 July 1999, it was reported that "The Federal Government is cracking down on businesses that evade the 7 per cent superannuation

guarantee levy,.....” The same article also reported “But the ATO has abandoned it’s policy of following up all complaints from workers about employers’ superannuation contributions, relying instead on individual employees to make enquiries.”

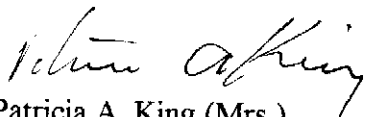
In the Australian Financial Review of 15 July 1999, a letter to the editor, titled “ATO under fire on super contributions”, was published. This letter was submitted to the AFR by Kevin Thompson MP, Shadow Assistant Treasurer, Victoria. Based on a reading of Mr. Thompson’s letter, one could be excused for concluding that the Superannuation Guarantee legislation is intended to provide a “guarantee” in name only, but not in reality.

In the Australian Financial Review of 23 July 1999, it was reported that “ATO targets employers over super.” The article suggested that employers failing to pay “1998-99” employee superannuation contributions faced “.....big penalties from the Australian Tax Office.”

A reading of all three articles does nothing, in my opinion, to make it clear just what the ATO’s policy really is in respect to it’s policing of the Superannuation **Guarantee** legislation. Copies of each of the Australian Financial Review articles are enclosed.

In conclusion, I certainly don’t expect the Senate Select Committee to take action to collect my unpaid Superannuation Guarantee contributions on my behalf. But what I and, I expect, many other employees in my position would hope will emerge from the inquiry, is a clear indication of whether the Superannuation Guarantee legislation can deliver a “guarantee” on statutory superannuation contributions; or should I and others, stop wasting our time chasing employers and the ATO.

Yours faithfully,


Patricia A. King (Mrs.)

Enclosures (8)

42 Wheeler Parade
Dee Why 2099

20 October 1998

The Company Secretary
Work Mode Uniform Manufacturers
1/13 Mitchell Road
MOOREBANK 2170

Attention: Rhonda

Dear Rhonda,

Re: Superannuation Guarantee Contributions

It is now some six (6) months since I ceased employment with Work Mode Uniform Manufacturers and, during that time, I have contacted John by telephone to enquire when I might expect to receive the superannuation guarantee contributions, and the income earned on those contributions, owed to me by Work Mode, for the 1996/97 and 1997/98 tax years.

I have been questioned by our accountant at the time of preparation of my income tax returns for both those tax years on the whereabouts of my superannuation contributions. The advice from our accountant is that I should write to you and nominate a deadline for receipt of the amount owed to me; and to send this letter by Certified Mail to ensure it's delivery to you and the timing of that delivery.

Our accountant also advised me that there is a statutory obligation on Work Mode to have made such contributions no later than 28 July in the year immediately following the end of both the 1997 & 1998 tax years. I imagine that Work Mode has fulfilled it's statutory obligations, therefore I believe that there is no reason why a payment cannot be made to me no later than fourteen (14) days after the posting date of this letter.

Further advice to me is that if payment is not received in the reasonable time frame nominated then I should refer the matter to the Taxation Department, as the relevant regulatory authority, for advice.

Based on the amount of gross earnings shown on the 1997 and 1998 Group Certificates issued by Work Mode, I calculate the base contributions owed to me as follows:

<u>Tax Year</u>	<u>Gross Earnings</u>	<u>Contribution %</u>	<u>Base Contribution Amount</u>
1997	\$ 8,901.00	6.0	\$ 534.06
1998	<u>\$ 7,829.00</u>	6.0	<u>\$ 469.74</u>
	\$16,730.00		\$1,003.80

Of course, this calculation does not provide for reasonable earnings on those contributions.

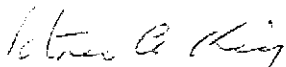
While it is difficult for me to assess what the earning might have been over my employment period from 10 July 1996 to 1 April 1998; it was a period of very buoyant investment returns for superannuation funds.

Even adopting a moderate 12% per. annum earnings rate; and accepting contributions made once annually fully in arrears on 28 July 1997 and 28 July 1998, an additional amount of approximately \$95.00, by way of income earned, is indicated. On that basis, I calculate that the amount owed to me by Work Mode over the period of my employment is therefore not less than \$1,100.00.

Rhonda, I look forward to receiving payment of an amount of \$1,100.00, within the time frame nominated herein, to the address shown on this letter. Payment should be made to Pavlow Pty. Ltd. (Super Fund Ac).

Pavlow Pty. Ltd. is the Trustee of the Douglas B. King & Co. Superannuation Fund.

Yours sincerely,



Patricia King

42 Wheeler Parade
Dee Why. 2099

1 December 1998

Deputy Commissioner Of Taxation
Australian Taxation Office
P.O. Box 9811
PARRAMATTA NSW 2123

Dear Sir,

Patricia A. King
Tax File No. 169973774
Superannuation Guarantee Contributions

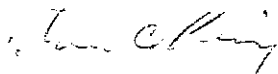
I enclose herewith copy of my self-explanatory letter of 20 October 1998 to my former employer - Work Mode Uniform Manufacturers. The letter was sent by Registered Post No. RD10991463, with delivery/ receipt confirmed on 26 October 1998; refer copy Advice Receipt herewith.

To date I have not received a response from Work Mode Uniform Manufacturers confirming when I will be receiving the superannuation guarantee contributions referred to in my correspondence.

I now seek the advice of the Australian Taxation Office as to what action I should now take in order to facilitate payment to me of the superannuation guarantee contributions payments to which I believe I am entitled.

I look forward to the favour of your advice in due course.

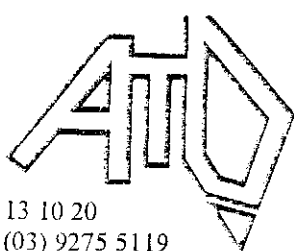
Yours faithfully,



Patricia A. King

Enclosures (2)

*These letters (copies)
returned to P.K.
with covering
letter of 1/2/99.
AK*



Telephone: 13 10 20
Facsimile: (03) 9275 5119

Our Reference: SPR/EN/1441
Your Reference:

20 January 1999

Ms Patricia King
42 Wheeler Parade
DEE WHY NSW 2099

Dear Ms King

SUPERANNUATION GUARANTEE : EMPLOYER CONTRIBUTIONS

Thank you for providing us with your completed *Employee Notification of Insufficient Employers Contributions* form.

The Australian Taxation Office (ATO) appreciates any information that will assist us in administering the superannuation law. It also values all information from the community regarding compliance.

The information that you have provided will be passed to our compliance and investigative teams for analysis.

In relation to your case, we will not be able to provide you with any specific details because of privacy and secrecy requirements. These requirements prevent us from disclosing information about your employer and from giving you details of the progress of any action against your employer. We realise this can be frustrating for employees who may have received insufficient superannuation, however we must protect the privacy of all parties.

If we collect superannuation contributions from your employer you will receive a voucher which you must deposit into your superannuation account.

Please refer to the Question and Answer sheet enclosed for further explanations about what we will now do with the information you have provided.

Yours faithfully

(Michael Micallef)
for Michael Monaghan
DEPUTY COMMISSIONER OF TAXATION

'Employee Notification of Insufficient Employer Contributions' Form

Questions and Answers

1. What will the ATO do with the information I provide ?

The information will be added to a database which the ATO use to guide audit and other compliance action. The database includes information from a range of sources however information of this kind from employees themselves is a particularly valuable source of intelligence about non-compliance.

2. Will the ATO investigate my employer directly ?

The ATO will record and analyse all the information they receive regarding non-compliance by employers. In some cases direct audit action will be undertaken. In others they will inform the employer of their obligations and the penalties for non-compliance.

They will not necessarily investigate your employer directly.

3. Why doesn't the ATO audit all cases ?

In many cases the failure to pay superannuation can be addressed through information and re-stating the penalties for non-compliance. In others, audit action is more appropriate.

The ATO will analyse all the information they receive and this, along with other risk indicators, forms the basis for setting their audit and other compliance priorities. The decisions on what response is warranted are directed to maximising compliance with the superannuation law.

4. Will I be advised if the ATO takes action on my notification ?

No. ATO staff are bound by privacy and secrecy requirements to ensure information held by us remains confidential. They are not permitted to disclose to you any information about your employer, whether the ATO has taken any action against your employer, or the progress of any action taken.

5. How will I know if the ATO is successful in collecting superannuation on my behalf ?

If the ATO collects superannuation from your employer, you will receive a voucher for your share to deposit into your superannuation account.

6. What other actions can I take to follow up my super ?

Check your payslips to see if any information about super is listed. Ask your workmates to see if they receive any super and to which fund it is deposited. Talk to your employer. If you work in a medium or large business you may need to go to your payroll or personnel section to find the information you need. In cases where employers have obligations under industrial awards to provide super for their employees, you should contact the Department of Workplace Relations and Small Business or your industry fund.

7. What can I do if I need further clarification ?

For further explanation regarding these Questions and Answers please call the Superannuation Helpline: 13 10 20.

Patricia A. King
42 Wheeler Parade
Dee Why. 2099

27 January 1999

The Manager
Department Of Workplace Relations and Small Business
Office Of Workplace Services
Level 7, North Wing
477 Pitt Street
SYDNEY. 2000

Dear Sir or Madam,

Superannuation Guarantee: Employer Contributions

In response to my letter of 1 December 1998, with enclosures, to the Australian Tax Office, I received a response dated 20 January 1999 enclosing to me an "Employee Notification of Insufficient Employer Contributions' Form - Questions and Answers." At Question/Answer No. 6 on that form, it notes that "In cases where employers have obligations under industrial awards to provide super for their employees, you should contact the Department of Workplace Relations and Small Business or your industry fund."

Copies of the ATO letter, and enclosure, of 20 January 1999 to me; and copies of my letter of 1 December 1998, and enclosures, to the ATO, are enclosed herewith.

The purpose of this letter to your department is, therefore, sent as a consequence of the ATO advice to me.

I look forward to your advice as to whether it is a correct strategy for me to contact your department in this matter and, if so, what assistance or further advice can your department provide to me to enable me to recover the Superannuation Guarantee Contributions owed to me by my former employer - Work Mode Uniform Manufacturers of 1/13 Mitchell Road, Moorebank NSW and formerly of Unit 34/5 Ponderosa Parade, Warriewood NSW; the latter address being my former place of employment.

I understand , from discussions with former workmates, that other employees of Work Mode have experienced similar difficulties obtaining superannuation payments owed to them. I further understand that some have had payments effected as a result of representations made to Work Mode on their behalf by the relevant industry union. I was not a member of any union during my period of employment with Work Mode.

I look forward to the favour of your response in due course.

Yours sincerely,

Patricia King

Enclosures

Received 3/2/99



Sydney Office

Reference: C/8450

Patricia A. King
42 Wheeler Parade
DEE WHY 2099

Dear Patricia

I refer to your letter relating to non-payment of superannuation contributions, which was received in this office on 1 February 1999.

Superannuation contributions are principally governed by the Superannuation Guarantee Legislation (SGL) which currently requires your employer to contribute the equivalent of 7% of your earnings. Prior to 1 July 1998 the contribution rate was 6% of your earnings. This Superannuation Guarantee legislation is administered by the Australian Taxation Office (ATO).

Over a decade ago Superannuation was initially legislated for in the area of industrial awards, with the requirement being for a 3% contribution rate. The present Superannuation Guarantee legislation allows for the 'award' 3% entitlement to form part of it's current 7% contribution rate. This requirement remains in awards, but this Department (or a similar NSW Department) could only pursue a lesser amount than the ATO legislation prescribes.

For this reason, and since the ATO has undertaken to investigate your complaint, this Office cannot offer any advice or assistance.

Should you wish to discuss this letter, I can be contacted on 02 9282 0867

Yours sincerely

Chris Woolard
Compliance Services
1 February 1999

Level 7, North Wing, Sydney Central, 477 Pitt Street, SYDNEY NSW 2000
GPO Box 9879, SYDNEY NSW 2001
Telephone: (02) 9282 0867 Fax : (02) 9282 0865
Internet: <http://www.dwrsb.gov.au>

Corporate collapses trigger Tax Office super crackdown

Sean Aylmer

6/7/99

dressing, beautician and seasonal industries are being targeted by the ATO.

The Federal Government is cracking down on businesses that evade the 7 per cent superannuation guarantee levy, with internal Australian Tax Office figures showing that one in five companies is not fully compliant with the law.

New businesses, companies that are late in making pay-as-you-go tax payments and the retail, hospitality, hair-

The acting deputy commissioner of superannuation at the ATO, Mr Leo Bator, said 15 project teams had been set up to pursue errant employers. "We have freed up resources . . . to do more compliance activity."

"We're getting in touch with 6,500 retailers and working with the hair-dressing and beauty industry," he said.

"Through hospitality associations we are looking at hotels and res-

taurants and we're examining regional areas that have not been so well covered, [including] Kalgoolie and Coolgardie [in Western Australia] and Cairns.

"Also, we're getting information on seasonal employees and new employers. We are also doing work on high-risk employers based on information provided by other parts of the tax office," Mr Bator said. Late tax

Continued page 8

Collapses trigger super crackdown

From page 1

payers were obvious candidates for investigation.

The project teams inform, educate and audit, though Mr Bator admitted only a small number of companies were audited.

During the next month the ATO will make 10,000 phone calls to employers who have not yet made their 1998-99 payments. Mr Bator said initial results from the phone exercise were encouraging.

But there is a long way to go before full compliance is attained. Internal studies by the ATO show that only 80 per cent of all businesses are fully compliant - the same level as six years ago - with many problems arising from confusion about who is an employee and the rate of super applicable.

"The majority of employers do not evade deliberately. Mostly it's a case of people not understanding their responsibilities," Mr Bator said.

While 20 per cent of companies did not follow superannuation legislation fully, 19 per cent were partially compliant and 1 per cent were non-compliant.

The percentage of non-compliant companies had remained fairly stable, but more efficient auditing of companies meant the tax office was identifying larger amounts of unpaid superannuation, Mr Bator said.

Mr Bator admitted that the self-

assessment system which governs superannuation payments meant it was difficult to prevent some companies from failing to pay entitlements.

"To some degree all we can do is wait till the end of the year," he said. The ATO had tried to work "smarter" to catch errant employers and had cut back its efforts to investigate all employee complaints.

"We used to chase down every one of them but in more than 50 per cent of cases the employer was doing the right thing. Now we ask the employees to make inquiries themselves," Mr Bator said.

Employers have until July 28 to pay their 1998-99 superannuation guarantees, otherwise they become liable for a superannuation charge.

The charge is equivalent to the amount the company should have paid, plus an administration fee, plus interest accrued since July 1, 1998. In addition, the company cannot claim a tax deduction on the charge.

Mr Bator said the penalties were harsh enough to ensure there were few "return visitors".

The Federal Government has come under fire after the closure of Oakdale Colliery in late May left employees short of wages and leave entitlements.

The Prime Minister, Mr John Howard, has initiated an inquiry, but a government spokesman said it did not include superannuation entitlements because legislation governing them was already in place.

ATO targets employers over super

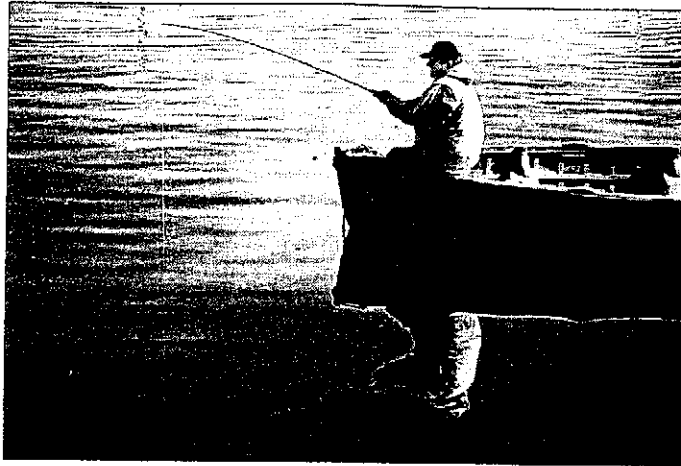
Sean Ayfimer 23/7/99

Superannuation experts have warned employers that they must pay their 1998-99 employee contribution liability within nine days or face big penalties from the Australian Tax Office.

Employers failing to make the July 28 deadline for superannuation contributions will feel the wrath of the ATO, which is taking a more active approach towards delving into financial affairs of defaulting companies.

The ATO is in the middle of a campaign to remind businesses about their superannuation liabilities, including calling 10,000 employers. But if companies fail to comply, they will be penalised, said GIO Financial Services executive director, Mr Ross Butler.

"The last couple of years the ATO has made it clear it will impose penalties and in many cases it will conduct an audit of



The taxman's hook is baited and awaiting a catch.

Photo: WAYNE TAYLOR

the companies ... that looks further into their financial affairs," Mr Butler said.

All employers are required to pay the 7 per cent superannuation contribution into a complying fund for all employees who earn more than \$450 each month. If they fail to meet the

deadline, they become liable for a superannuation charge, consisting of the contributions owed to employees, an administrative charge of \$50 plus \$30 for each employee, and a 10 per cent interest charge.

Companies that pay the contribution between June 30 and

July 28 will have to wait until the end of the 1999-2000 financial year to claim it as a tax deduction. Any that fail to pay by the final deadline permanently lose deductibility for the 1998-99 contributions.

For an employer with 10 employees and a payroll of \$400,000, failing to lodge a superannuation contribution would cost close to an extra \$3,500.

Mr Butler, who is responsible for a superannuation industry fund, expects a surge in payments next week.

The ATO campaign is designed to remind employers of their superannuation obligations. It is targeting firms which have previously had difficulty meeting tax payments, those in industries less likely to pay superannuation and companies that have been the subject of complaints by employees.

An ATO insider said the response from employers to the campaign had been very good.

ATO under fire on super contributions

15-7-99

Your recent front-page article "Corporate collapses trigger Tax office super crackdown" highlighted an issue which I have taken up with the Tax Office, its failure to properly handle complaints from workers whose employers have not paid their Superannuation Guarantee Contributions.

I am quite concerned that the ATO has "cut back its efforts to investigate all employee complaints" and "now we ask the employees to make inquiries themselves."

What sort of message is this? It waves the white flag to recalcitrant employers that they may get away with non-compliance.

The ATO needs to enforce the application of the Superannuation Guarantee Levy. It is critical to the retirement incomes of all Australian workers that they ensure that employers comply.

Employers have a legal liability to pay workers SG contributions and workers are entitled to the assurance that the Tax Office will act on

complaints, not just file them.

I have been contacted by employees who are having problems with payment of the SG.

They have been told that the ATO was only collecting figures on non-compliance for statistical purposes!

Minister Kemp should follow up this issue immediately and instruct the ATO to do their job properly.

Kelvin Thomson MP,
Shadow Assistant Treasurer,
Victoria.