



Senate Select Committee on Superannuation and Financial Services

Main Inquiry Reference (c)

Submission No. 14

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WA SHEARING CONTRACTORS ASSOCIATION (INC)

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



Dear Secretary

The Association was unaware, until recently that your committee had been established; therefore we could not meet the deadlines for submissions. I was contacted by the Australian Taxation following a media release by the National Farmers Federation, which mentioned that a shearing contractor in Western Australia had been forced into bankruptcy as a result of fines applied under the Superannuation Guarantee legislation.

Because the contractor was a member of this Association I was fully aware of the facts of the matter.

The first proposal that this Association would like the Senate Committee to consider is.

That the Superannuation Guarantee Charge Legislation should be amended to give the Commissioner of Taxation discretionary powers in the application of fines on taxpayers.

We would also submit

That the fines provided in the legislation in relation to Shortfalls should be moderated.

The current provisions in relation to shortfalls require the Taxpayer to pay the shortfall to the Commissioner of Taxation plus an administration charge and a fine calculated at the rate of 10% per annum on the shortfall.

The mandatory period for calculating the fine is as from the 1st July in the tax year in which the Superannuation Contribution was due, to the date on which the shortfall is paid.

For example if a contribution became due on 15 May 1999 but the employer did not make the payment until 8th August 1999, 12 days after the 28th July 1999 the final date for payment of contributions which became due in the 12 months ended 30 June 1999, a shortfall arises.

The fine paid by the employer is at the rate of 10 percent on the contribution as from 1st July 1998.

In addition to the fine the employer has to pay to the Commissioner of Taxation the amount of the late paid contribution

The Commissioner then advises the employee that he is holding a Superannuation contribution, which is grossed up by the amount of the fine. The employee is provided with a "certificate" which the employee sends to the Superannuation fund they choose and the fund then contacts the Commissioner and requests payment.

We accept the need for an "interest component" to compensate the employee for the late payment. However we do not accept that it should be calculated from 1st July. If the employer had made the payment on the 27th July the employee would only commence to earn interest as from that date and because the Commissioner deducts 15% of contributions the employee would only earn 10% on 85% of the contribution.

We believe that if the employer is only late in making the payment they should not be required to pay the contribution again to the Commissioner. An "interest component" fine calculated from the date the employee earned the contribution should be sufficient penalty.

The Superannuation funds should not accept late payments because they refuse to refund these payments.

We believe that shortfalls where the employer was only late in making payment should not have to be paid again i.e. paying the same contribution twice. If an employer has not made **any** payment then they are better off than an employer who has made the payment late. *Is this equitable?*

In 1995 when the contractor referred to in my opening paragraphs called on the Association for assistance we wrote to the Prime Minister and the Federal Treasurer as well as every Western Australian Senator and MHR. Copies of some of the letters are provided for you committee's information.

The contractor's transgression was discovered when a random audit of his records for the year ended 30th June 1995 revealed that for that year and several preceding years the contractor had paid the Superannuation contributions late.

The end result of the Commissioner's action was to force the contractor into bankruptcy. Also the financial trauma caused a breakdown in the contractor's marriage and his life was ruined. Purely because he was late in making payments and the draconian provisions of the Superannuation Guarantee Charge Legislation required the contractor to pay the contributions again without the ability to recover the first payments.

He would have been better off financially if he had not paid the contributions at all. He would then only have had to pay them once.

Another matter we would raise is in relation to the fact that the present legislation only requires contributions to be paid once a year.

It is this Association's policy that the legislation should be amended so that contributions must be paid quarterly.

While we are an employer organisation we believe that it is morally wrong for contributions earned by an employee to be held and used as working capital by the employer, causing the employee to lose earnings on their contribution.

Another concern of the Association is the fact that the Australian Taxation Office does not seem to have the resources to adequately police the Superannuation Guarantee Legislation to ensure that all employers are in fact paying the 7% contribution.

The contribution adds 17 cents per sheep to the contract rate for shearing sheep. Contracting is very competitive and a contract can be lost for the sake of two cents. Therefore contractors who are not meeting their obligations have a definite advantage. My members give me two reasons for their allegations that some contractors are not paying Superannuation. The first is that such contractors offer prices that are below even the finest tuned price. The second is that they (the complaining member) frequently engage a worker who has been employed by another contractor and when they ask the worker for their Superannuation number they do not have one and say their previous employer did not pay Superannuation.

When I have contacted the ATO and offered to give them names of employers who are probably in breach of the SGCL they say they will only act on a written complaint by an employee. Unfortunately when I went to the effort of copying the form, employees must lodge with the ATO, and sending them to member contractors the workers who claimed that they had never received Superannuation the workers declined to make the complaint on the grounds that they did not want to "dob" anyone in.

We believe that it would be simple for the ATO to check employers' annual financial statements and ensure that in the Profit and Loss Account that the amount claimed as a deduction for Superannuation was equivalent to 7% of gross wages.

An alternative is the suggestion we make in the final paragraph of this letter. Namely making employees responsible for paying the occupational Superannuation

Another matter we would raise is the proposal which has been "floated" by the Government namely that employees earning less than \$900 in any calendar month will be able to have the equivalent of the Superannuation Contribution which would now be paid into a fund, paid to them in cash. We believe that if this proposal is proceeded with it will defeat the objectives of Occupational Superannuation, which are, as we understand them, to reduce the burden on the Australian Taxpayers in the years ahead for financing Social Security Aged Pensions.

While the law only requires Occupational Superannuation contributions to be paid when an employee's earnings exceed \$450 in any calendar month it is common practice in the shearing industry to pay the contribution on any earnings. This is done because many employees only work 2 or 3 days with one employer and then move to another employer. Particularly shedhands, who are paid between \$88 and \$126 per day depending on their age. So in 3 days they would only earn between \$264 and \$378. However during a month they would earn from various employers well in excess of \$450.

The shearing industry could not operate without these short-term casuals and we believe that they are entitled to an occupational Superannuation contribution.

This situation probably exists in other industries and again the non-payment of occupational Superannuation defeats the intent of increasing the number of self funded or partly self funded retirees.

Finally we submit that employers should not be unpaid "tax collectors" held responsible to pay the occupational Superannuation contributions into the prescribed funds. With the multitude of funds now available it is an onerous task for employers to draw a number of cheques in order to accommodate the requirements of their employees.

We believe that employees should be made responsible to pay their own contributions. We accept that their gross wage would have to be increased to provide them with the necessary funds.

It would be a simple task for the Australian Taxation Office to introduce a system to check that employees had paid the appropriate amount of Occupational Superannuation into an approved fund.

The Group Certificates could be redesigned to allow employers to list the total amount paid to an employee as Occupational Superannuation. If this change were made it would facilitate the ATO's checking that Superannuation contributions were being paid.

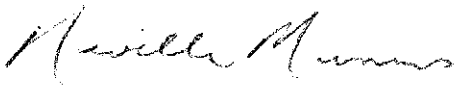
Conclusion

I apologise for the lateness of this submission and hope that you can give it serious consideration.

I realise that some of the points we raise may technically not come within the Terms of Reference for the committee's enquiry. However I hope that you will give them all due consideration and where they fall outside your enquiry, advise me as to whom I should direct them.

If you require elaboration on any issue we have raised please let me know.

Yours faithfully



N O MUNNS
Secretary