
Reference No: Superannuation Guarantee/dh-7-21

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Superannuation Guarantee increases to 10% from 1 July 2021

Members are reminded that in accordance with the *Superannuation Guarantee (Administration) Act 1992* (the Act), the Super Guarantee employer contribution rate increases from 9.5% to **10%** of ordinary time earnings from 1 July 2021. This is part of a series of increases prescribed under the Act, which currently provides that contributions will increase to 12% by 1 July 2025.

The new minimum 10% Super Guarantee rate will apply to wage payments made on or after 1 July 2021, including any work in that pay period performed prior to 1 July 2021. That is, it is when the payment is made (rather than when the work was performed) that determines the applicable contribution rate.

Members should note that in most instances the practical effect of the increase to the Super Guarantee will be an increase to an employee's total remuneration. Employers do **not** have an ability to unilaterally reduce an employee's base salary to offset the Super Guarantee, **unless** the employment contract is structured in a way that permits such an option – e.g., the remuneration package is **inclusive** of superannuation.

VACC encourages any member seeking further information to contact the Workplace Relations team on 03 9829 1123 or ir@vacc.com.au for further advice and assistance.

Victorian Wage Theft Act 2020 takes effect

The contentious Victorian [Wage Theft Act 2020](#) (the Act) commences operation from 1 July 2021. The Act, to be enforced by Wage Inspectorate Victoria, introduces criminal penalties for three Employee Entitlement offences of up to 10 years imprisonment for individuals and fines of up to \$1,090,440 for a body corporate and \$218,088 for an individual.

The three Employment Entitlement offences are:

- Dishonest withholding of employee entitlements;
- Falsification of an employee entitlement record; and
- Failure to keep an employee entitlement record.

The Act defines an *Employee Entitlement*, in accordance with relevant laws, contracts and agreements, as:

“an amount payable by an employer to or in respect of an employee, or any other benefit payable or attributable by an employer to or in respect of an employee, including salary, allowances and gratuities, and the attribution of annual leave, long service leave, meal breaks and superannuation”.

Members should note that under the Act, an Employee Entitlement offence committed by an employee (e.g., payroll manager) will be attributed to the body corporate (i.e., employer), if it can be established that a 'corporate culture' existed within the body corporate that authorised or permitted the relevant conduct. However, an employer will be able to avoid such attribution if it can demonstrate that it has exercised due diligence.

As the term 'due diligence' is not defined under the Act, there appears to be no intention for the body corporate to do anything more than take reasonable care in all of the circumstances to ensure compliance with the provisions of the Act.

Members may therefore find that they are already exercising due diligence, through appropriate oversight, enforcement of relevant policies and procedures and utilisation of external service providers, including VACC. Services provided by VACC that can assist members demonstrate due diligence include:

- Provision of accurate advice and information on employee entitlement obligations, including Award interpretation and record keeping requirements;
- Award Wage Guides;
- Employment Contracts;
- Fact Sheets;
- Disciplinary management, dispute resolution and training; and
- Audit service

Whilst there remain questions as to how the Act will operate in practice, particularly given the apparent overlap with the federal *Fair Work Act 2009* enforced by the Fair Work Ombudsman (FWO), the commencement of the new Act provides an opportune time for members to review their arrangements to ensure they are firstly, compliant with their Employee Entitlement obligations; and secondly, able to demonstrate their due diligence in continuing to meet these obligations.

Members seeking further information or assistance are encouraged to contact the Workplace Relations team on 03 9829 1123 or ir@vacc.com.au.

Daniel Hodges
Executive Manager – Workplace Relations
Industrial Relations OHSE Department