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List of Acronyms

ATO	Australian Taxation Office
CPSU	Community and Public Service Union
GBE	Government Business Enterprise
ISC	Insurance and Superannuation Commission
JOB SKILLS	Commonwealth Sponsored Program
LEAP	Landcare Environment Action Program
LGAT	Local Government Association of Tasmania
RBFB	Retirement Benefits Fund Board
SES	Senior Executive Service
SGA	Superannuation Guarantee Administration Act 1992
SGC	Superannuation Guarantee Charge
SGD	Superannuation Guarantee Determination issued by the Australian Taxation Office
SIS	Superannuation Industry Supervision Act (SIS) 1993

Glossary

Term	Description
Contributory Scheme	A scheme whereby both the employee and the employer contribute to a superannuation scheme.
Non-Contributory Scheme	A scheme whereby an employer only contributes to a superannuation scheme.
SGA	<i>Superannuation Guarantee (Administration) Act 1992.</i>

INTRODUCTION

This review was carried out under the provisions of Section 44(b) of the Financial Management and Audit Act 1990. This section states that the Auditor-General “may carry out examinations of the economy, efficiency and effectiveness of Government departments or public bodies.” The conduct of such audits is often referred to as performance auditing or value for money auditing and is a component of what is described as a comprehensive audit process adopted by audit offices within Australia and overseas.

This report relates to the performance audit conducted by the Tasmanian Audit Office during the period May 1996 to April 1997 of “Compliance with Superannuation Guarantee Arrangements”.

SUMMARY OF RECOMMENDATIONS

Non Compliance with SGA

All employers should ensure they are complying with the requirements of the SGA by establishing appropriate mechanisms to monitor and control the administration of SGA compliance.

(page 11)

Board Members

Employers with representatives working on committees as directors should review SGA arrangements to ensure that members are receiving their due entitlement. Board members who receive attendance and sitting fees which exceed the minimum \$450 per month requirement should have their SGA benefits maintained.

(page 12)

Elected Representatives

Councils should check that elected representatives who receive in excess of \$450 per month have a 6% SGA component provided.

(page 12)

Probationary Employees

All employers should ensure that probationary employees, who earn more than \$450 per month, and who are not covered by a contributory scheme whilst they are on probation, are provided with SGA contributions.

(page 12)

SGC Rates

The correct rate, currently 6%, should be applied for those employees who receive amounts in excess of \$450 per month.

(page 12)

Contract Employees

It is recommended that councils review the status of all their employees and ensure that those on contract are receiving their due entitlement under the SGA.

(page 13)

Payment of SGA Monies

Employers need to ensure that regular quarterly payments, as required under SGA provisions, are made.

(page 13)

Government Representative Not Receiving SGA Benefit

All board members who receive fees above the minimum monthly amount of \$450 should have an SGA component provided for them even though the board fees may have been assigned to a partnership, employer, trust fund or some other person or employing authority.

(page 13)

Board Members Not Receiving SGA Benefit

Employers with Board members who are already members of the RFBF contributory scheme, should check whether the members are receiving a benefit under an employer funded scheme equal to or greater than the current prescribed SGA rate.

(page 14)

Documentation for Assignment of Board Fees

Where board fees are assigned to a partnership, superannuation fund or employing authority, the taxation variation documentation required should be maintained to support exemption from the normal PAYE taxation (or Group Certificate) regime.

(page 14)

BACKGROUND

The Commonwealth's *Superannuation Guarantee (Administration) Act 1992* (SGA) is an Act relating to the establishment and administration of the Superannuation Guarantee Charge (SGC) scheme and for related purposes. Pursuant to Section 3 of that Act, the SGA is binding on the Crown in Right of the State of Tasmania.

The Superannuation Guarantee Charge began on 1 July 1992, to provide a minimum compulsory level of superannuation support payable by State Agencies, State Authorities and other employers to "employees". If employers do not provide the minimum level of support they will pay a tax called the Superannuation Guarantee Charge.

Employers are responsible for ensuring compliance with the SGA. The superannuation support provided must be paid into a complying superannuation fund. The support due for each employee is based on two factors:

- the employer's base payroll, and
- the employee's earnings.

The percentage charges in each financial year are set out in the following table:

Financial Year	Charge Percentage (%)	
	Where employer's base year payroll \$1m or less	Where employer's base year payroll above \$1m
1.7.92 to 31.12.92	3	4
1.1.93 to 30.6.93	3	5
1993/94	3	5
1994/95	4	5
1995/96	5	6
1996/97	6	6
1997/98	6	6
1998/99	7	7
1999/2000	7	7
2000/01	8	8
2001/02	8	8
2002/03	9	9

The Employee's Earnings

Under Sec 27(2) amounts actually paid over \$450 in a month requires a superannuation contribution to a complying fund/scheme. Certain prescribed categories of employees are exempted. Some of these include:

- salary or wages prescribed for the purposes of Sec 27(1)(e) (refer "Prescribed salary or wages" definition as per Appendix 3);
- salary or wages of less than \$450 paid to an employee in a month (Sec 27(2)) (refer "Low income earners" definition as per Appendix 3);
or
- salary or wages paid to a Part-time employee who is under 18 years of age, (Sec 28) (refer "Part-time employees" definition as per Appendix 3).

Should the funds/schemes not be "complying" there are ramifications relating to non-compliance such as;

- loss of concessional tax treatment and associated taxation implications (eg imposition of the highest rate of tax (47%) rather than the concessional amount of tax (15%) on fund income);
- additional taxation penalties and interest;
- reduced member benefits if concessional treatment withdrawn;
- solvency of the funds concerned may be an issue with increased tax responsibilities;
- cash flow implications may arise with respect to benefit and taxation payments;
- income earning assets may have to be liquidated to make tax payments; and
- the Commonwealth may withdraw the exemption from the ISC regulations which could impose additional administration costs and charges on the management of the particular fund or funds.

Previous Reviews

Preliminary discussions were held with officers of the Department of Treasury and Finance and the Retirement Benefits Fund Board.

A number of agencies were surveyed by the Department of Treasury and Finance in June 1995. The survey covered a small sample of “inner budget” departments and statutory authorities in receipt of funds from the Consolidated Fund. The results of the survey indicated compliance with the SGA provisions. The survey did not cover Councils or Government Business Enterprises (GBE).

Consequently, audit emphasis was placed on compliance by Local Government and a sample of GBEs.

AUDIT OBJECTIVE, TIMING AND COST

To ensure compliance with the SGA with respect to government agencies, councils and public bodies.

Basic Issues

The basic issues to be considered were:

- are the State Service and its associated instrumentalities, Boards, Councils, Agencies aware of their responsibilities under the SGA?
- are the State Service and its associated instrumentalities, Boards, Councils, Agencies complying with the SGA?
- have appropriate mechanisms and procedures been established to record SGA contributions for eligible employees?
- is the rate used in accordance with the *Superannuation Guarantee (Administration) Act 1992* and its associated regulations?
- have all classes of employees (for example Contract/SES, Permanent and Casual/Temporary employees) been included?

Audit Approach

A risk based audit approach was developed during the planning phase of the audit. All State Government agencies, GBE's, Councils, Boards and associated organisations were considered in the scope of the audit. Compliance with the SGA also involved examining areas where potential errors or omissions were likely to occur. The audit assessed the appropriateness of the SGA rate being applied and considered the sufficiency or otherwise of record keeping arrangements to ensure correct employee entitlements and employer responsibilities were being adhered.

Audit Testing

Audit testing commenced with a review of a previous study performed by the Department of Treasury and Finance in June 1995. This survey was limited to a small number of government departments and statutory authorities.

Discussions were held with Department of Treasury and Finance, Retirement Benefits Fund Board (RBFB), Australian Taxation Office, Community and Public Sector Union, Local Government Association of Tasmania and certain departments and statutory authorities. A preliminary questionnaire was devised for circularisation amongst all councils and a sample of statutory authorities during July 1996.

The trial study, undertaken during September 1996, indicated potential weaknesses with respect to Councils and a number of Boards. Initial results and responses indicated some uncertainty with respect to Council's SGA obligations. Consequently a revised questionnaire was devised for Councils during October 1996 and audit testing was focused on council compliance.

A sample of 29 councils, two departments, two boards and one statutory authority was selected. Some inaccurate and incomplete responses were noted from the preliminary survey and questionnaire results (refer Appendix 1). Of concern was compliance with SGA, where board members and probationary employees were not considered to be normal employees.

Timing and Cost

The audit was initially developed in May 1996 and completed by April 1997.

The estimated cost of this report at the time of printing was \$29 770 which includes salaries and related on costs and office overhead expenses. The total cost of the performance audit will be disclosed in the Office's annual report.

AUDIT FINDINGS AND RECOMMENDATIONS

Non-compliance with SGA

The audit survey found 32 of the 35 employers surveyed were not complying with at least one aspect of compliance with the SGA. Some of these compliance issues have stemmed from employers failing to establish suitable mechanisms to monitor and control the requirements of the SGA.

An agreement was signed between the Treasurer and the RBF in relation to compliance with the Commonwealth's Superannuation Guarantee (Administration) Act 1992 with an application date commencing on 1 July 1994.

Most "inner budget" agencies were already complying with SGA by virtue of the fact that most contributors were members of the RBF.

Three of the six authorities surveyed were not maintaining the required 6% superannuation guarantee benefit into a complying superannuation fund.

RECOMMENDATION

All employers should ensure they are complying with the requirements of the SGA by establishing appropriate mechanisms to monitor and control the administration of SGA compliance.

Board Members

The results from the survey (refer Appendix 1) were indicative of further inadvertent breaches whereby certain board members in receipt of remuneration were not receiving their SGA entitlements and four councils had quoted incorrect SGA rates. Evidence was obtained indicating that there may be some board members who were receiving SGA monies into funds which may not be deemed to be complying funds. For example, some board members have their board fees and SGA monies paid into a practice, partnership, firm or superannuation fund which may not be in complete accordance with SGA requirements and determinations (SGD 93/1,93/10, 95/1).

The survey covered 35 employers. Responses from 10 of those employers indicated a lack of knowledge in such areas as the status of contract, probationary and temporary employees and the relevant superannuation contribution rates necessary to meet employer SGA requirements.

RECOMMENDATION

Employers with representatives working on committees as directors should review SGA arrangements to ensure that members are receiving their due entitlement. Board members who receive attendance and sitting fees which exceed the minimum \$450 per month requirement should have their SGA monies set aside.

Elected Representatives

The questionnaires indicated 28 of the 29 Councils surveyed did not comply with the legislation.

RECOMMENDATION

Councils should check that elected representatives who receive in excess of \$450 per month have a 6% SGA component provided.

Probationary Employees

Four councils failed to provide SGA benefits for probationary employees.

RECOMMENDATION

All employers should ensure that probationary employees who earn more than \$450 per month and who are not covered by a contributory scheme whilst they are on probation are provided with SGA contributions.

SGC Rates

Four councils failed to respond with the correct rate of SGA payments applicable in accordance with those specified in the Table on page 5.

RECOMMENDATION

The correct rate, currently 6%, should be applied for those employees who receive amounts in excess of \$450 per month.

Contract Employees

One council responded that they had no contract employees. However it was ascertained that there were senior staff employed on a contract basis.

RECOMMENDATION

It is recommended that councils review the status of all their employees and ensure that those on contract are receiving their due entitlement under the SGA.

Payment of SGA Monies

Audit noted one agency was paying a board member's SGA contribution annually in arrears rather than complying with the regular quarterly payment arrangement of SGA monies.

RECOMMENDATION

Employers need to ensure that regular quarterly payments, as required under SGA provisions, are made.

Government Representative Not Receiving SGA Benefit

It was further noted that there were certain anomalies where one government representative working on a statutory board had not received SGA coverage in relation to his board sitting fee. Even though the board member had assigned the board fee to his employing government agency the member is still entitled to receive the benefit of SGA coverage as SGA benefits pertain to the individual.

RECOMMENDATION

All board members who receive fees above the minimum monthly amount of \$450 should have an SGA component provided for them even though the board fees may have been assigned to a partnership, employer, trust fund or some other person or employing authority.

Board Members Not Receiving SGA Benefit

The converse situation was also noted on the same board where a state government department employee from another agency was not receiving an SGA component as his board fee was treated as a "salary payment" and a 5% contributory deduction was being made into the RBFB Scheme. As the board member is deemed an employee, and an existing contributory fund member, this entitles the member to a 15% employer funded benefit. Therefore, under SGA rules, because the employee receives an employer funded benefit equal to or greater than the prevailing SGC rate no SGA contribution is required.

RECOMMENDATION

Employers with Board members who are already members of the RFBF contributory scheme, should check whether the members are receiving a benefit under an employer funded scheme in order to comply with SGA rules.

Documentation For Assignment Of Board Fees

One Council member and three members of the six statutory authorities surveyed had made a request that all of their total remuneration or sitting fees be paid into a partnership, superannuation fund or employing authority. In these circumstances certain authorised taxation variation documentation should be obtained to support an exemption from the normal PAYE taxation (or Group Certificate) process. However it should be noted that the payment of one's total board fee into a superannuation fund does not exempt the employing authority from the 6% SGA payment to a complying fund. SGA benefits are attached to the individual.

RECOMMENDATION

Where board fees are assigned to a partnership, superannuation fund or employing authority, the taxation variation documentation required should be maintained to support exemption from the normal PAYE taxation (or Group Certificate) regime.

Superannuation Arrangements For Board Members

Certain inconsistencies were noted by the survey. Some members were entitled to join the RFBF contributory scheme and receive 15% employer support while other members outside the contributory scheme were only entitled to the 6% employer funded scheme.

It became apparent that some employees, who are not members of the RFBF, could after two years apply to be members of the contributory scheme thereby receiving an improved employer benefit of 15% provided that they pay an employee contribution of 5% and continue on as a board member after serving two years of a three year period. However it would appear inconsistent that some board members receive employer funded superannuation of the order of 15% while others receive only 6%.

APPENDIX 1

SGC QUESTIONNAIRE

The Tasmanian Audit Office is currently undertaking an exercise to assess the level of compliance by Local Government Authorities with Commonwealth Superannuation Guarantee requirements.

The questionnaire has intentionally been divided into four employment category types: (1) **Contract** (2) **Permanent** (3) **Casual/Temporary** employees and(4) **Elected Representatives**. When the question asks for “%”, please state the percentage of salary paid to the relevant fund. The Office is seeking your cooperation with respect to the following questions.

1. NAME OF EMPLOYING COUNCIL

.....

.....

(Name, title and phone number of officer completing the questionnaire)

2. CONTRACT EMPLOYEES

(a) During 1995/96 did the council have Contract employees?

..... YES (Refer Q 2(b))

..... NO (Refer Q 3)

(b) If YES

Does the council provide employer contributions for Contract positions?

	%	Name of Fund
<input type="checkbox"/> YES

NO

(c)

Has a **non-contributory** scheme been established ?..... YES (Refer Q 2(c)(i))

NO (Go to Q 3)

(c)(i) What is the name(s)and address(es) of the **Non Contributory** Fund/Scheme:

.....

(ie TASPLAN, MEAS, AMP, NATIONAL MUTUAL etc)

3. PERMANENT EMPLOYEES

(a) Are permanent employees covered by a **contributory** superannuation Fund/Scheme?.....

	%	Name of Fund
<input type="checkbox"/> YES

<input type="checkbox"/> NO Refer Q 3 (b)		

(b) If NO

Does the employer provide for a **non contributory** scheme?

	%	Name of Fund
<input type="checkbox"/> YES

<input type="checkbox"/> NO		

(c) How are probationary employees covered?

	%	Name of Fund
<input type="checkbox"/> Contributory Scheme

<input type="checkbox"/> Non Contributory Scheme

<input type="checkbox"/> Other/Not Applicable

4. CASUAL/TEMPORARY EMPLOYEES

(a) Are casual/temporary employees earning in excess of \$450 per month covered by the superannuation guarantee?

	%	Name of Fund
<input type="checkbox"/> YES

<input type="checkbox"/> NO		

(b) Are persons working on "LEAP" covered by the superannuation guarantee?

YES

NO

(c) Are persons working on "JOB SKILLS" covered by the superannuation guarantee?

YES

NO

5. ELECTED REPRESENTATIVES

(a) Are elected representatives covered by a contributory superannuation Fund/Scheme?.....

% Name of Fund

YES..... ..

NO

(b) Are elected representatives covered by a non contributory superannuation Fund/Scheme?.....

% Name of Fund

YES..... ..

NO

6. CHILD CARE CENTRES

Where a council is the sponsor of a child care program/centre, are all persons employed covered by superannuation (regardless of whether they are paid by Councils' payroll system or not)?

YES

NO

7. ANY OTHER FUNDS?

(a) Are there any other Superannuation Funds/Schemes to which the organisation makes payment not mentioned above ?

YES

NO

(b) Please specify details:.....

.....
.....
.....
.....

(Name of Fund/s and Address details)

DEFINITIONS

Employee Details

Definition of an employee supplied by Australian Tax Office:-

“For Superannuation Guarantee purposes, an employee is a person who is paid to work under an employers control and direction under a contract of employment (contract of service). This contract can be written or oral.

In addition to permanent, part time and casual employees, employees include:-

- i) anyone entitled to payment for the performance of duties as a member of the executive body of a body corporate, eg. a company director.
- ii) Individuals contracted wholly or principally for their labour - Superannuation is payable for individuals where the labour component represents more than 50% of the total value of the contract and the individual is contracted to perform the duties personally. Superannuation is required to be contributed on the labour component of contracts principally for labour even though the contractors may not be employees for PAYE or other legislative purposes. All individual subcontractors and consultants contracted wholly or principally for their labour are included. SGC does not apply where the contract was in fact with a partnership, company or trust.
- iii) Individuals that are paid to perform or present, or to participate in the performance or presentation of, any music, play, dance, entertainment, sport, display or promotional activity or any similar activity involving the exercise of intellectual, artistic, musical, physical or other personal skills.
- iv) Individuals that are paid to provide services in, or in connection with, the making of any film, tape, disc or radio or television broadcast.”

Prescribed Salary Or Wages

This refers to salary and wage payments made under Commonwealth Government employment programs, which are alternatives to social security payments.

Low Income Earners

Low income earners refer to employees who have been paid less than \$450 in a month.

Part-Time Employees

A part-time employee refers to an employee working less than 30 hours per week.

RBFB

Retirement Benefits Fund Board. The RBFB is the medium for recording and complying with SGA requirements for the majority of State Agencies, Authorities and Departments.

Complying Fund

A fund that meets the conditions set down in *Superannuation Industry (Supervision) Act (SIS) 1993*.

Favourable tax advantages are available to superannuation funds while they continue to comply with SIS.

PREVIOUS REPORTS TO PARLIAMENT

1992	SPECIAL REPORT NO 1	REGIONAL HEALTH SUPPORT SERVICES
1992	SPECIAL REPORT NO 2	STUDENT TRANSPORT
1993	SPECIAL REPORT NO 3	EDUCATION INSTITUTIONS CLEANING SERVICES
1993	SPECIAL REPORT NO 4	STANDARD OF ANNUAL REPORTING BY GOVERNMENT DEPARTMENTS
1993	SPECIAL REPORT NO 5	MUNICIPAL SOLID WASTE MANAGEMENT
1994	SPECIAL REPORT NO 6	ADMINISTRATION AND ACCOUNTABILITY OF GRANTS
1994	SPECIAL REPORT NO 7	REGIONAL HEALTH MEDICAL REVIEW
1994	SPECIAL REPORT NO 8	WASTEWATER MANAGEMENT IN LOCAL GOVERNMENT
1995	SPECIAL REPORT NO 9	HERITAGE COLLECTION MANAGEMENT
1995	SPECIAL REPORT NO 10	OFFICE ACCOMMODATION MANAGEMENT
1995	SPECIAL REPORT NO 11	RECORDING AND REPORTING BY GOVERNMENT DEPARTMENTS OF THEIR NON-CURRENT PHYSICAL ASSETS
1995	SPECIAL REPORT NO 12	TENDERED WORKS
1996	SPECIAL REPORT NO 13	NURSING COSTS IN TASMANIA
1996	SPECIAL REPORT NO 14	REVIEW OF PERFORMANCE INDICATORS IN GOVERNMENT DEPARTMENTS
1996	SPECIAL REPORT NO 15	CASH MANAGEMENT IN LOCAL GOVERNMENT
1996	SPECIAL REPORT NO 16	DEPARTMENTAL ACCOUNTING MANUALS AND COMPLIANCE WITH PROCEDURES
1997	SPECIAL REPORT NO 17	AIR TRAVEL
1997	SPECIAL REPORT NO 18	ADMINISTRATION OF STATE GOVERNMENT CONCESSIONS