

IMPORTANT NOTICE: The information outlined below applies to employees and employers who are under State industrial relations jurisdiction. Since the commencement of the federal government's workplace relations laws on 27 March 2006, employers who are constitutional corporations (including a financial or trading corporation – generally Pty Ltds or Limiteds) and their employees are now covered under federal industrial relations jurisdiction. These employees and employers should contact the Queensland Workplace Rights hotline on **1300 737 841** or visit www.workplacerrights.qld.gov.au for further information and assistance on the laws.

What is Occupational Superannuation?

Superannuation is a structured way of providing an income for employees after retiring from work due to age or ill health.

The majority of employees in Queensland are entitled to have contributions paid into superannuation funds as a condition of their employment.

Employers in Queensland must comply with provisions relating to industrial instrument [award or agreement] based superannuation and the Commonwealth Government's Superannuation Guarantee Charge. An employer is required to ensure that they meet the minimum requirements set out in both the industrial instrument and the Guarantee.

What is industrial instrument based superannuation?

In 1987, in National and State wage case decisions, the Federal and State Commissions adopted principles on the provision of occupational superannuation as an industrial instrument entitlement. This benefit was awarded in lieu of a direct increase in industrial instrument wages for employees at the time.

The majority of industrial instruments now include superannuation clauses. However, there are some industrial instruments that still do not include such clauses and there are many employees who are not covered by industrial instruments.

What is "Superannuation Guarantee"?

Employers may find they are required to make contributions under the provisions of the Commonwealth *Superannuation Guarantee (Administration) Act 1992*. Payment of superannuation in accordance with this Act will usually fulfil an employer's obligation to pay industrial instrument based superannuation.

Who is eligible?

Reference needs to be made to the *Superannuation Guarantee (Administration) Act 1992* to determine whether the employer is liable to make contributions on behalf of an employee. Should an employee not be eligible in accordance with that Act, reference needs to be made to the relevant industrial instrument or agreement to determine whether the employee is eligible under that document.

Eligibility under the Act and industrial instruments is usually dependent upon the employee's level of earnings, their status of employment and in some cases the number of hours worked each week or month.

A general ruling by the full bench of the Queensland Industrial Relations Commission effective from 1 January 2005 has set the minimum level of earnings under the majority of Queensland Awards at the same level as the federal legislation i.e. earnings > \$450 in a calendar month.

Who are exempt?

Some employees are excluded from the Superannuation Guarantee. They include:

- employees paid less than \$450 in a calendar month
- employees under 18 years working 30 hours or less per week
- employees paid for work done outside Australia
- employees aged 70 and over
- foreign executives with an appropriate visa or entry permit
- employees paid to do work of a domestic or private nature for not more than 30 hours per week, e.g. nanny, housekeeper.

What has to be contributed?

Should an employee be eligible under the terms of either the Act or an industrial instrument, it is compulsory for their employer to make contributions into an approved superannuation fund on their behalf. The Act or industrial instrument will set the level at which contributions are to be made.

What is the basis for calculating contributions?

An industrial instrument will usually specify that employer contributions for eligible employees is based on the employee's ordinary time earnings, which can include over award payments and in some circumstances, shift penalties and other allowances.

In addition to the compulsory employer contributions, most funds allow employees to make voluntary contributions.

What is the prescribed level of superannuation contribution?

An employer is required to ensure that they meet the minimum requirements set out in both the industrial instrument and the Superannuation Guarantee.

As from 1 January 2005 most industrial instruments will provide for a minimum superannuation contribution amount calculated at 9% of the employee's ordinary time earnings or an amount prescribed by the Commonwealth *Superannuation Guarantee (Administration) Act 1992*. Where the amount of 9% is stipulated in the industrial instrument an exception will apply to contributions made by an employer when an employee is absent on workers' compensation. The contribution level will be calculated on 3% of the employee's ordinary time earnings when they are absent on workers' compensation.

Is there a qualifying period?

As from 1 January 2005, where an industrial instrument previously stipulated the minimum level of earnings as 35% of \$309.00, it has been varied to exclude employees whose ordinary time earnings are less than \$450 in a calendar month. This is similar to the exclusion provided under the *Superannuation Guarantee (Administration) Act 1992*.

Previously, industrial instrument superannuation clauses generally required that employees must have a minimum level of weekly ordinary earning before superannuation contributions are payable (e.g. earnings greater than 35% of \$309.00 = \$108.15/week) or that employees work a certain period of time before they

have an entitlement to occupational superannuation (e.g. 5 consecutive weeks and a minimum of 50 hours work during that period).

Refer to your industrial instrument for specific information.

Which fund?

Most industrial instruments specify that contributions be paid into a limited number of approved funds. However, provisions in the *Industrial Relations Act 1999* allowed for contributions to be paid to any complying superannuation fund if there was a written agreement between the employer and employee.

The Industrial Relations & Other Acts Amendment Act 2005 effective from 1 April 2005 removed section 405 of the Act which allowed employers and employees to agree upon a complying superannuation fund other than a fund specified in their industrial instrument. The removal of this section will not affect the operation of federal "choice of funds" legislation.

New agreements about choice of fund cannot be made under Queensland legislation, however, employers and employees who exercised their right to opt out of an industrial instrument fund as permitted under the previous section 405 of the Act, will be permitted to continue to contribute to that agreed fund despite this section now being removed from the Act.

A complying fund is one that is authorised under the *Superannuation Industry (Supervision) Act 1993*.

What are the benefits to employees?

When an employee retires, they become entitled to a superannuation benefit.

Most funds incorporate insurance that provides for a substantial benefit to be paid on the death or permanent disablement of the employee.

Schemes are portable and employee's benefits can be transferred from one employer to the next.

What are the employee's obligations?

It is in an employee's interests to complete, when requested by the employer, an application to join the approved occupational superannuation scheme. Failure to do so could mean the employee might not be able to claim the accrued superannuation benefit.

Remember, it costs employees nothing to join unless they wish to make voluntary contributions to increase the benefit.

What are the consequences for failing to make contributions?

Legal proceedings may be taken against an employer for failure to observe the industrial instrument provision. The employer may be ordered to pay back payments of contributions as well as any interest that those contributions would have attracted in an approved fund.

In the event of serious injury to an employee, an employer may be liable for damages in a civil court action. The damages could be equivalent to the benefits that would have been paid by the relevant superannuation fund to which the employer should have been contributing.

Where can I get more information?

Contact

- Wageline
4th Floor, Centro Lutwyche
543 Lutwyche Road, Lutwyche Q. 4030
(or) PO Box 820, Lutwyche Q. 4030
 - Wageline Information Centre: Ph: 1300 369 945*
 - Fax: (07) 3872 0519
 - Web site: www.wageline.qld.gov.au
 - Telephone Interpreter Service: Ph: 131 450
- * Local call cost (mobiles & payphones may be extra)

For further information on the Superannuation Guarantee Charge visit the Superannuation Home Page on the Australian Taxation Office's web site at <http://www.ato.gov.au/super/> or by telephoning **13 10 20** toll free.

Disclaimer

The information in this fact sheet is provided on the basis that readers will be responsible for making their own assessment of the matters discussed and are advised to verify all relevant representations, statements and information.

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