



## Compliance Essentials e-bulletin September 2012

### Changes to Director Obligations

There has been a tightening of director obligations in relation to PAYG and superannuation. The following extract from the ATO website ([www.ato.gov.au](http://www.ato.gov.au)) summarises the changed director obligations in this respect that came into effect on 29 June 2012.

<b>New law</b>
<i>In addition to liability for PAYG withholding amounts, directors are personally liable for their company's unpaid superannuation guarantee charge.</i>
<i>A new director does not become liable for a director penalty until 30 days after they become a director.</i>
<i>In addition to estimating unpaid PAYG withholding liabilities, the Commissioner can estimate unpaid superannuation guarantee charge.</i>
<i>The Commissioner may only commence proceedings to recover a director penalty 21 days after giving a director penalty notice to the director. However, the Commissioner may also serve a copy of a director penalty notice on the director at his or her tax agent's address. Giving a copy of the notice to the tax agent does not affect when the Commissioner may commence proceedings to recover the penalty.</i>
<i>A director can achieve remission of their personal liability in the same circumstances as under the current law. However, where three months has lapsed after the due day for the company liability and the liability remains unpaid and unreported the director can no longer achieve remission of the penalty.</i>
<i>For new directors, the three month period counts from when they become a director of a company, rather than three months after a debt arose.</i>
<i>In addition to these defences, a director that becomes liable to a director penalty for not causing its company to comply with its superannuation obligations is not liable to a director penalty if the company treated the Superannuation Guarantee (Administration) Act 1992 (SGA Act 1992) as applying to a matter in a way that was reasonably arguable and the company took reasonable care in applying the SGA Act 1992 to the matter.</i>
<i>Company directors and their associates who are entitled to a credit attributable to a payment made by a company that has failed to pay amounts withheld under PAYG withholding to the Commissioner can be liable to pay PAYG withholding non-compliance tax.</i>

### Misleading Advertising

A recent Federal Court judgement serves as a reminder that the powers of the ACCC are wide reaching. In July 2012 the Federal Court in Brisbane handed down a fine of \$800,000 to Metricon Homes Qld for misrepresentations included in consumer brochures.

### Occupational Health and Safety

The case of Inspector Estreich v Hadfield reinforces some basic principles of safe workplace management. A fifteen year old apprentice, working at a business of which Mr Hadfield was managing director, died as a consequence of workplace injuries after having an arm caught in an unguarded machine. Not only was the machine unguarded but the apprentice, lacking experience having been employed for only three weeks at the time of the incident, was inadequately supervised. It was also noted that the organisation failed to provide workers with written work instructions and fell short on training and staff instruction. Correct supervision, comprehensive work instructions and staff training are all matters that are fundamental to operating and maintaining a safe working environment.

### Unfair pay

It is reported that as part of the process of tracking down employers who do not implement fair pay that Fair Work Australia will be targeting brothels in Victoria over the coming months to audit the remuneration of clerical staff.

One alleged breach that is reported in relation to a commercial organisation is an outcome of a Fair Work Australia audit of Victorian business Quality Food World and an action for unfair pay is being brought against the company and the company's production manager. There is an alleged underpayment of workers between July 2007 and March 2011 to the tune of \$316,795 comprising hourly rates, loadings, penalty rates, overtime, and annual leave entitlements.

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