

# Sheridans' View



## Powerful new tool for ATO (Single Touch Payroll)

**There are currently no robust estimates of superannuation guarantee non-compliance. However, in December 2016 Industry Super Australia estimated non-compliance in 2013/14 to be \$2.8 billion (affecting an estimated 2.15 million employees). In March 2017 this estimate increased to \$5.6 billion (affecting an estimated 3 million employees).**

A review of ATO case data indicates that small businesses account for around 70% of reported superannuation guarantee non-compliance. Cash flow problems are the main reason for SGC non-payment. A Superannuation Guarantee Cross-Agency Working Group established to report to the Federal Government made nine recommendations in March 2017, the first one being that "all businesses (including small business) comply with Single Touch Payroll."

Single Touch Payroll ("STP") is the streamlining of payroll reporting to the ATO by employers. It is a fundamental and significant change in the way employers report their employees' payroll information to the ATO. Employers will be required to report payments such as salaries and wages, pay as you go (PAYG) withholding and superannuation information to the ATO directly from their payroll system when they pay their employees.

Employers with 20 or more employees will need to start reporting through STP from 1 July 2018 (estimated to be approximately 72,000 employers), and those employers with 19 or fewer employees, from 1 July 2019 (estimated to be 700,000 employers). One of the ATO's stated principal short-term aims with STP is to identify non-payment of superannuation. Obviously the new mandatory system will also assist the ATO in identifying non-payment of PAYG liabilities.

In due course as more and more businesses go on-line and become compliant with STP, and the ATO is able to properly manage and analyse the vastly increased amount of information it will be receiving, the far better placed the ATO will be to ensure employers meet their statutory obligations regarding employees.

## A matter of trust

(The cold remains of what began with a passionate start... Billy Joel)

**Two recent important decisions have clarified whether or not trust assets held by an insolvent corporate trustee should be distributed pursuant to the priority regime for unsecured creditors in the Corporations Act 2001 (Cth).**

On 28 February 2018 the Victorian Supreme Court of Appeal handed down its judgment in the highly anticipated Amerind appeal decision, while a Full Federal Court decision was still pending in which that Court was considering the same issues (matter of Killarnee Civil & Concrete Contractors Pty Ltd (*In Liquidation*)).

The Amerind appeal decision confirmed that trust assets (as assets realised to satisfy a right of indemnity) are subject to the statutory insolvency regime and that, in a liquidation (or where S.433 applies), those realisations are to be distributed in accordance with the priority regime set out in S.556 of the Act.

On 21 March 2018 the Full Federal Court's Killarnee decision was delivered, which agreed with the Amerind decision in relation to the application of the priority regime to the trustee's right of indemnity.

There remains the query regarding the availability for trust and non-trust creditors to the proceeds of the trustee's right of indemnity, and the issue of the power of the liquidator of a disqualified trustee to sell trust assets.



## FOREWORD

*"The most common way people give up their power is by thinking they don't have any."*  
Alice Walker

*"Remember no one can make you feel inferior without your consent."*  
Eleanor Roosevelt

*"The question isn't who is going to let me, it's who is going to stop me."*  
Ayn Rand  
(The Fountainhead)

*"If you hear a voice within you say "You cannot paint", then by all means paint and that voice will be silenced."*  
Vincent Van Gogh

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# Sheridans' View

## GST at settlement for purchasers

Purchasers of new residential property will be required to pay GST directly to the ATO from 1 July 2018.

The legislation to introduce GST withholding on the settlement of new residential property purchases or subdivision of potential residential land passed both houses of parliament on 28 March 2018, received assent on 29 March 2018 and will commence on 1 July 2018.

The withholding regime will impact residential property developers and purchasers, as well as lawyers, conveyancers, financiers and other parties who operate in the property development industry.

The impetus for the legislative change is that currently some developers are making taxable sales of these types of properties and are failing to remit the GST collected from purchasers to the ATO (for example, by 'phoenixing').

There is a transitional arrangement that excludes sale contracts entered into before 1 July 2018 as long as the property transaction settles before 1 July 2020 (to provide certainty for sale contracts that have already been signed).

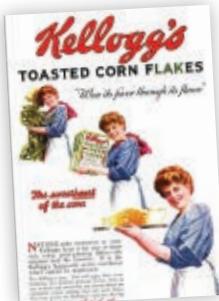
## Recent Assignments

- **Liquidation of:**
  - A farm owner and agricultural contractor
  - Two companies involved in the development and licensing of 3D television and computer technology
  - NBN cabling installer
  - A restaurateur
- **Personal insolvency administrations, including individuals involved with:**
  - Weddings and events styling
  - Mining consultancy
- **Informal insolvency advice to various businesses, including those involved in restaurant businesses, retail, construction, timber cabinetry and property investment**
- **Litigation support, including:**
  - Expert report regarding the applicability of the running account defence to a liquidator's unfair preference claim
  - Valuation of a financial planning business
  - Expert report quantifying the loss regarding an unconscionable conduct claim
  - Assistance and investigation in quantifying the parties' asset pool for a Family Court matter
  - Valuation of an electrical contractor
  - Assistance to a director regarding a liquidator's insolvent trading claim

**"Strive not to be a success, but rather to be of value."**

Albert Einstein

## DID YOU KNOW?



Mr John Harvey Kellogg, the Michigan physician who created Corn Flakes, produced and marketed the cereal in the late 19th century as a "healthy, ready-to-eat anti-masturbatory morning meal".

Kellogg was uncomfortable about sex, believing it to be detrimental to physical, emotional and spiritual well-being. He abstained from it and never consummated his marriage. However, Kellogg and his wife Ella were foster parents to 42 children, legally adopting at least seven of the fostered children.



## EDITORIAL

## Creativity vs morals

**Do we, and should we, extend "special licence" to those outstanding people, in particular our creative geniuses, who contribute in an extraordinary way to their field of interest but are nevertheless actually deeply flawed people.**

Of course, we are all flawed in some way, to some degree. For better or worse. But what if that flaw is extreme, or in our eyes unacceptable?

What makes a great artist or writer? Is it solely their great work that we should acknowledge, or should the perceived flaw affect our assessment of their work and contributions?

Let me give you some examples. There are many lauded literary artists who were staunchly anti-semitic: Ezra Pound, T.S. Eliot, Patricia Highsmith. William Golding (*Lord of the Flies*) in his unpublished memoir *Men and Women* (which Golding wrote for his wife) details his attempted rape of a 15-year-old girl.

**Paul Gauguin**, a French post-impressionist artist, towards the end of his life in French Polynesia took three native brides, aged 13 and 14, infecting them and many other local girls with syphilis.

**Richard Wagner**, a German composer who introduced new ideas in harmony, melodic process and operatic structure, was controversial in part because of his anti-semitic views. Likewise Chopin, Liszt and Mussorgsky held similar anti-semitic views.

And more recently: **Jimmy Page** of Led Zeppelin knowingly carried on a "relationship" with a 14-year-old girl (a "baby groupie") when he was 29. And then there was the disturbing police raid video of **Michael Jackson's** Neverland ranch which revealed the extent of Jackson's pornography collection and pictures of naked young boys.

Lastly I mention **Eric Gill**, an English sculptor and graphic designer. His statue Prospero and Ariel adorns the BBC's Broadcasting House and the Creation of Adam is in the lobby of the European HQ of the United Nations in Geneva. Gill produced sculptures for the Stations of the Cross in Westminster Cathedral.

Gill recorded in his diary (reported in Fiona MacCarthy's biography) that he regularly had sex with two of his daughters, his sisters and even the family dog.

It appears that in the past, as a society we have been quick and willing to overlook and ignore major personality flaws. And in large part, we have been ignorant of our geniuses' flaws. But now we are often better informed. **Should we judge? Who are we to judge? But if not, who does?**

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