



27 February 2017

Senate Standing Committees on Economics
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Parliament House
Canberra ACT 2600

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Dear Secretary

The Finance Sector Union thanks the Committee for the opportunity to make a submission to your Inquiry into Superannuation Guarantee Non Payment.

Should you require any further information please contact National Secretary Julia Angrisano, 03 9261 5337 or Julia.angrisano@fsunion.org.au

Yours sincerely

A handwritten signature in blue ink that reads "Julia Angrisano".

Julia Angrisano
National Secretary

Submission:

Finance Sector Union of Australia

Submission to the Senate Economics References Committee

Inquiry into

Superannuation Guarantee Non Payment



FINANCE SECTOR UNION

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About the Finance Sector Union

The Finance Sector Union (FSU) is the union that represents workers in the banking, insurance, superannuation, and finance industries. In 2015 these industries had assets of around \$5.6 trillion and contributed 9% to GDP. The sector employs over 400,000 workers an estimated 17% of whom worked part time.ⁱ

FSU members face a variety of industrial challenges at work including;

- Work intensification
- Insecure employment
- A large gender based pay gap
- Skills development & portability
- Serious cultural issues around performance expectations and unpaid work.

The FSU is a party to more than 80 Enterprise Agreements registered under the Fair Work Act that regulate pay and conditions of employment across the finance sector.

Non-payment of Superannuation Guarantee in Commonwealth Bank

The sector's largest employer, the Commonwealth Bank (CBA), has a practice of not paying the Superannuation Guarantee on additional (above initially agreed) ordinary hours of work for part time employees. This submission focusses solely on that issue.

CBA currently employs approximately 7,000 part time employees. An estimated 89% of them are women and the overwhelming majority work in clerical grades.

¹ http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---ilo-jakarta/documents/meetingdocument/wcms_396163.pdf

The Contract, the EBA & Hours of Work

CBA part time employees are covered by the Commonwealth Bank Enterprise Agreement of 2016 (EBA). While hours of work are regulated by the EBA, most CBA workers have signed an Individual Flexibility Arrangement (IFA) that exempts them from the EBA hours of work clauses. Rather, the IFA typically obliges the workers to work those hours required by the CBA from time to time. The IFA typically has an initial agreed number of hours and an initial two week roster.

The IFA (and EBA where relevant) provides capacity for part time employees to work additional hours above the contracted hours at ordinary rates of pay. The following is an extract from the 'Hours of Work' clause which we believe is common to all CBA IFAs,

You will work such hours as are reasonably necessary for the full and proper performance of your duties. We will inform you of the hours we need you to work from time to time and these may change with our business needs.

You acknowledge and agree that any hours you are required to work in excess of 38 hours per week (averaged over a 6 month period) are reasonable so far as they are necessary for the full and proper performance of your duties. The base remuneration we pay you incorporates a component to compensate you for any additional hours you may work.

You may, from time to time, be required to work on a public holiday. Where this occurs we will provide you with a day in lieu at a time agreed with your manager.

IFAs then typically have Annexures marked "Hours of Work" which provide a fortnightly roster with the preamble, "Your initial agreed ordinary hours of work are XX per fortnight consisting of; .."

Based on the IFA it is clear that CBA part time employees can work ordinary hours up to 38 hours per week (averaged over 6 months) and only those hours above 38 per week can be characterised as "overtime" and these "overtime" hours will not attract any additional remuneration.

CBA does pay the single time hourly rate for any hours above those specified in the annexure to the IFA but does not pay the SG on them even though these hours are not overtime and they do not attract a loading or penalty payment.

Our members report that working additional ordinary hours above those initially specified is a relatively frequent and common occurrence. It can happen because of staff shortages or unforeseen workloads or a variety of other reasons in bank branches, contact centres and administration areas.

The ATO Ruling

The Australian Taxation Office provided SGR 2009/2 Superannuation Guarantee Ruling on the meaning of the terms 'ordinary time earnings' (at 10), 'ordinary hours of work' (at 13-17) and 'earnings in respect of ordinary hours of work' (at 25). SGR 2009/2 also defines 'overtime' (at 41-43).

In essence SGR 2009/2 says that the SG is payable on all ordinary hours of work but not overtime. CBA part time employees can, and do, work up to 38 hours per week as ordinary hours and CBA pays for all of these hours at single time rates but CBA only pays the SG on the initially agreed hours.

FSU Attempts to Recover the SG

FSU has raised concerns with this practice many times over the years since 2009 but the response from CBA has up until now been that the payment for these hours does not constitute ordinary time earnings as envisaged by the SG legislation.

Most recently the FSU raised the problem with CBA on 9 January 2017 and after a series of discussions and further correspondence over the ensuing six weeks CBA has not yet acknowledged the principle that the hours of work in question are covered by the SG.

FSU accepts that the process of identifying and rectifying every instance of underpayment of SG over the past seven years will require a meticulous process and it will be time consuming, but this process should not be used as a stalling tactic to delay a simple acknowledgement that the hours in question are subject to the SG.

The CBA Part Time Workers

The FSU surveyed 155 CBA workers about their experience around this issue. The responses included the following:

- They are typically low paid workers with 92% earning less than \$50,000 p.a.
- They are typically long serving loyal employees with 37% having more than 10 years of service with the bank
- They frequently work additional hours above those originally agreed with CBA (72%)

When asked to comment about their concerns regarding unpaid superannuation the CBA workers said the following;

- Prior to 2014 my contracted weekly hours were 4 hours per week and I often worked additional hours per week. I do have pay records from 1/07/2011 noting all additional hours I have work without being paid superannuation for these additional hours.
- Extra hours are paid at the normal hourly rate as extra hours above scheduled not overtime
- I hate the way part timers get abused. We are apparently just fillers yet we are expected to do full time work and revenue
- Associated issue is that you are called in to do extra hours above your contracted hours, the hourly rate is the same rate as the contracted rate, even though the call out can be at very short notice, sometimes as brief as 30 minutes or can be an extension to the day you are working.
- Since cut back in hours I have made it known I won't work extra on my days off or working days unless it is a severe shortage as we don't get paid extra super.
- I think it is terrible that the bank asks/expects people to work overtime but does not pay super for this work. I think this should be illegal.

- Don't get paid overtime unless manager has requested you work overtime. Never finish on time as mgr always wants to debrief before you go home but you don't get paid for it and also if you get caught up with customer after closing you don't get paid either.
- I was ppt (permanent part time) up until a year ago when I became full time, so I have been ppt for approx 8 yrs and my hours changed quite regularly
- Once this issue is resolved perhaps you could look at getting the additional hours worked credited to my annual leave balance
- I have checked my last payslip no extra funds for super paid
- I have been working full time for most of the past 12 months to cover short staff , as I welcome the extra hours I am concerned that I am not receiving super out of my contracted hours
- Since starting at the bank, I have always done additional hours- sometimes not paid properly for weeks on end. In smaller branches there is no choice
- CBA part time women workers have a high rate of being single. We are living on the edge financially

Conclusion

CBA is a large, strong profitable corporation that has been systematically unpaying superannuation to some of its lowest paid employees for years. Most of the employees in question are women. It is acknowledged that women have substantially lower superannuation balances than their male counterparts and are therefore more likely to have insufficient funds to sustain a comfortable lifestyle in retirement.

The FSU is determined to recover this unpaid superannuation with interest as a matter of equity and justice.

For further information, please contact Julia Angrisano at Julia.angrisano@fsunion.org.au

Yours sincerely,



Julia Angrisano
National Secretary



OUR JOBS OUR FUTURE