



SMEs face super payments

Businesses may have to pay superannuation to contractors in some circumstances after the Australian Taxation Office (ATO) succeeded in three separate actions.

The ATO won its arguments the contractors were actually employees, so their employers were required to pay the compulsory superannuation guarantee (SG) levy on their behalf.

Business advisory firm Hayes Knight director Greg Hayes told *Risk Report* a Federal Full Court action involved pollster Roy Morgan Research; and the Administrative Appeals Tribunal heard two cases against an interpretation and translation services company, Associated Translators & Linguists, and garment manufacturer John Brilliant.

"Any business that engages contractors needs to check the arrangements in place to determine whether there could be a Superannuation Guarantee exposure," Hayes said. "It all comes down to whether the individual is deemed an employee under the *Superannuation Guarantee Act*."

He said businesses that engaged contractors where the supply was principally labour were at greatest risk because those contractors were more likely to be deemed employees. "Small business has fewer resources to check through all the details and they may think they are doing the right thing but could still be risk exposed." Hayes said legislative definitions of 'employee' varied and the lack of a consistent definition created uncertainty.

But Freehills partner and superannuation expert Natalie Gullifer told *Risk Report* the laws were very clear. Employers needed to closely examine the *Superannuation Guarantee Act* and not assume, perhaps incorrectly, they were not required to pay contractors' superannuation, she said. (*Associated Translators and Linguists Pty Ltd v Commissioner of Taxation* [2010], [AAT 260](#), 14/4/10; *Brilliant v Commissioner of Taxation* [2010], [AAT 267](#) 16/4/10; *Roy Morgan Research Pty Ltd v Commissioner of Taxation* [2010], [FCAFC 52](#), 26/5/10)

This article first appeared in The Risk Report, Issue 337, Thursday 14 October 2010