

## Media Release

6 June 2007

### **EMPLOYERS MAY BE LIABLE FOR INNACURATE SUPERANNUATION ADVICE**

A recent High Court decision has highlighted the fact that employers may be liable in respect of any untrue statement made to an employee in regards to their superannuation, according to chartered accounting and advisory firm BDO Kendalls.

BDO Kendalls partner Paul Motta says that the decision underlines the need for employers to ensure that employees are fully informed of their rights in relation to superannuation.

"The case, *Commonwealth of Australia v Cornwell* [2007] HCA 16, related to the employment by the then Commonwealth Department of the Interior of a spray painter in the transport section, initially as a 'temporary employee' and later as a permanent employee, Mr Motta says.

"The Department had advised the man that he could not make contributions to the Commonwealth Superannuation Fund while he was a temporary employee, which was incorrect.

"The man has now sued the Department in relation to the retirement benefit being worth less than it would have been, had he not relied upon the negligent advice."

Mr Motta says a great deal of the case discussed the *Limitation Act* 1985 and whether this claim had been made in time.

"It was held that the claim had been made in time, that there was a negligent misstatement, which the man relied upon and that he suffered damage from that," Mr Motta says.

"The Department was liable for these damages."

Mr Motta says in another recent case before the Administrative Appeals Tribunal, an employee was hit with the superannuation guarantee charge on late superannuation contributions.

"The provisions relating to the superannuation guarantee are very harsh," Mr Motta says.

"The charge is levied when superannuation contributions are paid late, even where the contributions have been ultimately paid.

"There is no discretion for the Commissioner to remit the charge and therefore, the charge can be a second cost to the employer, over and above the original, albeit late, contribution.

"A triple cost is that the charge is not deductible."



Mr Motta says employers should take care that all superannuation contributions are paid on time.

For further information:

Kirsty Hetherington  
Three Plus Pty Ltd  
0421 203 684

Paul Motta  
BDO Kendalls  
02 9286 5865

**Note to editors:**

BDO Kendalls can offer the expertise of 130 partners and directors with over 1000 staff.

Our service lines include: Audit & assurance, Business advisory, Business recovery & insolvency, Consulting, Corporate finance, Forensic accounting, Tax advice & consulting. Our services also include a range of specialisations, in particular, Accredited family business advisory, Motor dealer services and Accredited growth services.

BDO International is the world's fifth largest international accounting and consulting organisation, with a total fee income of US\$ 3.3 billion and a worldwide network made up of 625 offices in 109 countries. Some 30,000 BDO partners, directors and staff provide business advisory services throughout the world.