



9 January 2009

Ms Cheryl-Lea Field  
Assistant Commissioner  
Superannuation Centre of Expertise  
Australian Taxation Office

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Dear Ms Field

**Re. Draft Superannuation Guarantee Ruling SHR 2008/D2**

As you are aware, Ai Group strongly disagrees with the interpretations in the above Draft Ruling, as it relates to the inclusion of regularly worked overtime as OTE.

In addition to the arguments set out in our submission of 6 January 2009, we wish to draw the ATO's attention to s.20 of the *Fair Work Bill 2008* which is currently before Parliament.

Under the new workplace relations system "*ordinary hours of work*" for award/agreement covered employees will be those hours set out in the relevant award or enterprise agreement. For award/agreement free employees, s.20 provides that the "*ordinary hours of work*" are:

- "the hours agreed between the employee and his or her national system employer as the employee's ordinary hours of work";

Or, if there is no agreement about ordinary hours of work:

- "for a full time employee – 38 hours; or
- for an employee who is not a full-time employee – the lesser of:
  - 38 hours; and
  - The employee's usual weekly hours of work".

The ATO's Draft Ruling is directly inconsistent with s.20 of the Bill.

For example, paragraph 15 of the Draft Ruling states that:

*"An employee's 'ordinary hours of work' for the purposes of the definition of OTE are the hours of work during which it is usual for the employee to work. The word 'ordinary' means 'regular, normal, customary, usual'. The expression 'ordinary hours of work' in relation to an employee is understood as meaning the hours the employee normally, usually, regularly or customarily works in his or her employment."*

The release of the Draft Ruling in its current form will cause massive cost and disruption to industry.

Relevant Court decisions, current legislation and impending legislation do not support the interpretations in the Draft Ruling.

I would be happy to provide any further information which you may require.

Yours sincerely

A handwritten signature in black ink, appearing to read "S. Smith". The signature is fluid and cursive, with a large initial "S" and a distinct "Smith" following.

Stephen Smith  
DIRECTOR – NATIONAL WORKPLACE RELATIONS