
Client Information Bulletin



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Work Choices – Your business and the new dismissal laws

The new dismissal laws introduced with the Federal Government's *Workplace Relations Amendment (WorkChoices) Act 2005* will impact all businesses. Under the new legislation a distinction is made between **unlawful terminations** and **unfair dismissals**.

Unlawful terminations

With the Government's *Work Choices Act* the employee's right to claim unlawful termination remains unchanged. It will be unlawful for an employer to terminate someone because of:

- Temporary absence from work because of illness or injury
- Trade union membership
- Non-membership of a trade union
- Seeking office as, or acting or having acted in the capacity of, a representative of employees
- The filing of a complaint, or the participation in proceedings, against an employer
- Race, colour, sex, sexual preference, age, physical or mental disability, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin
- Refusing to negotiate, make, sign, extend, vary or terminate an Australian Workplace Agreement (AWA)

- Absence from work during maternity leave or other parental leave
- Temporary absence from work because of the carrying out of a voluntary emergency management activity.

It will also be unlawful for anyone to apply duress to an employee in relation to negotiating and signing an AWA.

Unlawful termination claims are first heard before the Australian Industrial Relations Commission (AIRC). If conciliation fails in an unlawful termination case and a certificate is issued by the AIRC, the matter would go to the Federal Court of Australia, or in certain circumstances, another relevant court, for determination.

Employees who believe they have been unlawfully terminated will be eligible to receive up to \$4000 worth of legal advice from the Government. Eligibility for this money will be based on the merits of the employee's case, if they have a certificate from the AIRC, and if they are assessed as having a financial need.

Unfair dismissals

Under the new Act companies with 100 employees or less are exempt from the unfair dismissal laws. The unfair dismissal laws do apply for companies with more than 100 employees however they will need to have been with the company for more than six months before being eligible to make an unfair dismissal claim.

Redundancies

If an employee is made redundant they have no grounds to claim *unfair* dismissal however they may still be able to argue *unlawful* dismissal if they were discriminated against when

being selected for the redundancy. If a redundancy is challenged, the employer would be required to go before the AIRC and show they had 'genuine operational reasons' for the redundancy to ensure that the unfair dismissal legislation applies.

Including award entitlements for redundancies in workplace agreements is also no longer mandatory. Businesses with 15 employees or less no longer need to pay redundancies where the award was set after 26 March 2004.

These new Federal laws supersede all state dismissal laws.

Super guarantee contribution penalties

If an employer is late in making their superannuation guarantee contributions on behalf of an employee they must lodge a *Superannuation guarantee charge statement – quarterly form* and pay a penalty.

Under the old penalty system the employer would have paid:

- 1/ The superannuation owing into their employee's fund
- 2/ The tax office the equivalent amount
- 3/ A penalty fee
- 4/ An administration fee.

The money received by the tax office would then have been transferred to the employees' complying superannuation fund(s) or retirement saving(s). As a result, the employer would have effectively paid the employee's super contributions twice - once to the superannuation fund(s) or retirement savings account(s) and once to the tax office for the quarter.

Under the new penalty system the employer will still pay the same fees as outlined above. The difference is if they pay at least within 28 days after the lodgement date is due, what they pay the tax office can be used to offset or reduce what is owe to the employee's superannuation fund. This avoids the employer having to double pay into an employee's super.

The due date for lodging the *Superannuation guarantee charge statement – quarterly form* are:

Quarter 1 (July to September)
Superannuation due by 28 October
Quarterly statement due by 28 November

Quarter 2 (October to December)
Superannuation due by 28 January
Quarterly statement due by 28 February

Quarter 3 (January to March)
Superannuation due by 28 April
Quarterly statement due by 28 May

Quarter 4 (April to June)
Superannuation due by 28 July
Quarterly statement due by 28 August.

SMSF trustee compliance checklist

If you are a trustee of a Self Managing Superannuation Fund (SMSF) you have a range of responsibilities that you must adhere to in the day-to-day operation of your fund. Below is a checklist outlined in the Government's *Role and Responsibilities of Trustees* paper which details what you must be aware of as a trustee of a SMSF.

Trust deed – As a trustee, you are bound by your deed and are responsible for any contravention

of the rules set out in the deed. Do you know the contents of the deed in detail?

Trustees and members – Does your self-managed superannuation fund meet all its legal requirements? This includes single member funds.

Electing to be regulated – Has the SMSF elected to be regulated? The SMSF fund must elect to be a regulated superannuation fund and comply with the requirements of the *Superannuation Industry (Supervision) Act 1993* also known as the *SIS Act*. If the fund does not comply it may not receive concessional tax treatment and/or other sanctions may be imposed on the trustees of the fund for contravening the *SIS Act*.

Tax file number – Does the fund have its own tax file number?

Australian business number – Does the fund have its own Australian business number (ABN)? Although it is not compulsory that your fund has its own ABN, it is beneficial when dealing with Commonwealth agencies. Obtaining an ABN does not mean a fund is registered for GST, it is primarily used for identification purposes.

GST registration – Does the fund need to be registered for GST? A self-managed superannuation fund must register for GST if its annual turnover is greater than \$50,000. Common items that a superannuation fund's annual turnover may include are gross income derived from the lease of equipment or commercial property, and the provision of salary continuance insurance cover.

Separate bank account – Has a separate bank account been set up for the fund? This is very important to prevent the fund contravening the *SIS Act* and also assists trustees in preserving and protecting their retirement income.

Accepting contributions – Are you aware of the *SIS Act* regulations as they apply to accepting contributions in accordance with the trust's deed and from whom those contributions can be accepted?

Investment strategy – Does the fund have a medium to long-term investment strategy? Contravention of the requirement to have an acceptable investment strategy can result in the trustees being fined or sued for loss or damages. The fund can lose its compliance status and, as a result, its concessional rate of tax.

Investing – Are the assets of the fund kept separate from members, trustees and related employers?

Investment restrictions – Can you demonstrate you have not improperly misused assets within the fund as a trustee?

Record keeping – Have responsible accounting practices been adopted? Trustees must keep records of transactions and the financial position of the fund. The annual operating statement and annual statement of the fund's legal position and copies of annual returns lodged for five years must be kept. Minutes of all meetings, records of trustee changes, records of director changes and written consent by members for your appointment as a trustee must all be kept for ten years. Penalties apply if you fail to keep the records listed above for the required time period.

Paying a benefit – Will you pay benefits in accordance with the legal and trust deed requirements? Benefits should be checked for accuracy before payment. The payment standards of the *SIS Act* work with the sole purpose test and the preservation rules to ensure monies are paid to members only in appropriate circumstances.

Annual requirements – Have you lodged the contribution statements and combined income tax and regulatory returns as required? The annual requirements also include appointing an auditor to examine the year's records and pay the supervisory levy

Tax matters – Have you kept records of all the deductions, asset sales and purchases as well tax file numbers of members?

While the checklist above is extensive it does not cover every detail you are required to know

when managing your SMSF. For more information about the role and responsibilities of a SMSF trustee go to www.ato.gov.au/super or contact us.

Accounting standards deadline looms

The impending deadline for the adoption of the Australian equivalent of international accounting standards has prompted a call to small-to-medium enterprises (SMEs) to prepare themselves.

In July 2002 the Financial Reporting Council (FRC) issued a broad strategic directive that Australia would adopt international accounting standards by 1 January 2005. With this, companies and entities required to prepare financial reports under the requirements of Chapter 2M of the *Corporations Act* must comply with the Australian equivalents to the International Financial Reporting Standards (IFRS) for reporting periods beginning on or after 1 January 2005.

Entities with 30 June year ends will publish their first Australian International Financial Reporting Standards (AIFRS) financial reports for the half-year ended 31 December 2005 and for the year ended 30 June 2006.

While there are some larger companies that have not yet prepared for the new standards, there will be even greater numbers of small businesses – perhaps hundreds or even thousands that will not be ready either. Given that the responsibility to produce fully compliant financial statements will fall on the shoulders of company directors, there is a concern that many SMEs will be found in breach of these new standards.

For more information please contact us.

Simplified accounting method turnover thresholds

Food retailers can use the simplified accounting methods to calculate their GST. There are four different methods that can be used depending on the food retailer's business. They include:

1. **Business norms method** - where the retailer applies standard percentages to their sales and purchases to estimate their GST-free sales and purchases. Retailers who use this method must have an annual turnover that is \$1m or less.
2. **Stock purchases method** - where the retailer takes a sample of purchases and uses this sample to estimate their GST-free purchases and sales. Retailers who use this method must have an annual turnover that is \$2m or less.
3. **Snapshot method** - where the retailer takes a snapshot of their purchases and sales to estimate their GST-free purchases and sales. Retailers who use this method must have an annual turnover that is \$2m or less.
4. **Sales percentage method** - where the retailer calculates the percentage of GST-free sales made in a tax period and applies this percentage to estimate their GST-free purchases (trading stock only). Retailers who use this method must have an annual turnover that is \$2m or less.

In all these cases the annual turnover thresholds, as outlined above, are calculated on a GST-exclusive basis.

Where self-education expenses are not deductible

Self-education expenses are not deductible when there is no relevant connection between the self-education expenses and production of an assessable income.

In the case of *Lloyd v Federal Commission of Taxation* a taxpayer tried to argue that there was a perceived connection between the education expenses she had incurred while doing her PhD in Interactive Digital Media and Telecommunications and the increased income she received from her bank employer as a result of promotions.

Furthermore the taxpayer also tried to argue that there was a connection between the expenses claimed and the income she received in her later project administration and management roles with two other companies, and that these did not involve new income earning activities.

The Administrative Appeals Tribunal (AAT) found that perceived connection was not sufficient to justify the deduction. The AAT found that the taxpayer's purpose in undertaking employment was to support her study for her PhD, and her purpose in undertaking the PhD was to enhance and expand on her knowledge in the IT and telecommunications fields so that she could ultimately obtain more highly paid positions within that field.

Generally, you cannot claim a deduction for self-education expenses where the activity is:

- Designed to result in new income earning activities as was the case above, or
- Too general in nature. For example a manager who does a meditation course to improve her health and

therefore her efficiency at work cannot claim this as a self-education expense.

You can however claim a deduction for expenses that you incur in activities that:

- Maintain or improve the knowledge and/or skills that you exercise in your current income earning activities, such as a secretary undertaking an advanced word processing course because their current duties include extensive word processing, or
- Are likely to lead to an increase in income from your current income earning activities such as a teacher studying a postgraduate education course to improve her chances of promotion.

For more information about self-education deductions contact us.

No deduction for abnormal clothing expenses

The Administrative Appeals Tribunal (AAT) has held that the CEO and director of a company was not entitled to a deduction of approximately \$38,800 for abnormal work-related clothing expenses on the basis that the expenditure was not incidental and relevant to her earning assessable income.

The taxpayer had argued that while there was no written employment agreement with the company, and there was nothing in her conditions of employment which required her to wear any specific type of clothing she was the face of the company. The taxpayer contended that she would not have incurred the abnormal expenditure if not for what she perceived as the need to present the required image.

In seeking to obtain this deduction, the taxpayer sought

to rely on the full Federal Court decision in the *Edwards' case* (94 ATC 4255). The AAT however held that in the *Edwards' case* there was a clear connection between the clothing expenditure and income earning activities – a fact which did not exist here.

Merely because the taxpayer aimed to present a certain image and her clothing had to be suitable for her employment was not sufficient to change the character of the expense from a private to a business expense.

The AAT noted that all of the clothing items purchased by the taxpayer were conventional in nature — the clothing was not distinctive or unique, could be worn on any occasion including private and social occasions and was easily available to the public.

In general you cannot claim a deduction for conventional clothing that forms part of a uniform even if your employer requires you to wear them. For example a bartender wearing black pants and a white shirt or a sales assistant wearing an employer's brand name conventional clothing, such as a t-shirt, as a condition of employment are not deductible.

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