
Client Information Bulletin



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The simplified and streamlined superannuation plan – an outline

In the government's 2006-07 budget the treasurer announced significant reforms to Australia's superannuation system. Their aim is to provide the 100,000 Australians who turn 60 each year, choosing to retire, a much simpler system when deciding how to draw on their superannuation. Under the proposed plan, from 1 July 2007:

- Superannuation benefits paid from a taxed fund either as a lump sum or as an income stream such as a pension, would be tax free for people aged 60 and over.
- Benefits paid from an untaxed scheme (relevant primarily to public servants) would be taxed at a lower rate than they are now for people aged 60 and over.

Lump sums would be taxed at 15 per cent on lump sums up to a total of \$700,000. Amounts above this threshold would be taxed at the top marginal tax rate.

Pensions would be taxed at marginal tax rates but receive a 10 per cent offset. For example, a person who received a pension of \$50,000 per annum would receive a reduction in their tax of about \$5,000.

- Reasonable benefit limits (RBLs) for superannuation would be abolished providing greater incentive to save. Superannuation funds would not need to report benefit payments to the Australian Tax Office for RBL purposes.
- Individuals would have greater flexibility as to how and when to draw down their

superannuation in retirement. There would be no forced payment of superannuation benefits for them.

- The concessional tax treatment of superannuation contributions and earnings would remain. Age-based restrictions limiting tax deductible superannuation contributions would be replaced with a streamlined set of rules.
- The self-employed would be able to claim a full deduction for their superannuation contributions as well as being eligible for the Government co-contribution for their personal post-tax contributions.
- The ability to make deductible superannuation contributions would be extended up to age 75.
- It would be easier for people to find and transfer their superannuation between funds.

To further increase the incentive to save for retirement the government proposes to halve the pension assets test taper rate to \$1.50 per fortnight from 20 September 2007. This means pension recipients only lose \$1.50 per fortnight (rather than \$3) for every \$1,000 of assets above the relevant threshold.

The superannuation preservation age would not change. The preservation age is already legislated to increase from 55 to 60 between the years 2015 and 2025. People would still be able to access superannuation benefits before the age of 60, although they would continue to be taxed on their benefits under new simplified rules.

Post-tax contributions

Post-tax contributions, made from a person's after-tax income, such as a person's take-home salary or wage, is income for which a tax deduction has not been claimed on the contribution. Under the plan it is proposed to limit the amount of post-tax contributions a person can make each year to \$150,000.

Any earnings on the excess contributions would be effectively taxed at the top marginal tax rate.

To accommodate larger one-off payments the government would allow contributions under the cap to be 'brought forward' over three years. Under these arrangements, a person could make a maximum one-off contribution of \$450,000 every three years.

For example, an individual could contribute \$450,000 between 1 July 2006 and 30 June 2007. This would therefore comprise their 2006-07 entitlement as well as their 2007-08 and 2008-09 entitlement. Under this scenario, no further contributions could be made until 1 July 2009.

For more detail about the government's plan to simplify superannuation go to www.simplersuper.treasury.gov.au

Note – the implementation of these plans are subject to the legislation being passed by parliament.

Employer's guide to making an Australian Workplace Agreement

With the introduction of the government's WorkChoices legislation the legal requirements

for making an Australian Workplace Agreement have changed. They include:

- Your agreement must comply with the Australian Fair Pay and Conditions Standard. The five minimum conditions in the Standard are:
 - A federal minimum wage, minimum award classification rates of pay, and casual loadings set by the Australian Fair Pay Commission
 - Four weeks paid annual leave per year (five weeks for continuous shift employees) and up to two weeks of which can be cashed out in a workplace agreement
 - Ten days paid personal/carer's leave and two days compassionate leave per year
 - Up to 52 weeks unpaid parental leave (maternity, paternity and adoption)
 - Maximum ordinary hours of work limited to 38 hours per week (which can be averaged over twelve months in an agreement or award) and reasonable additional hours.
- Your agreement must not contain prohibited content. A term of an agreement that contains prohibited content is void and cannot be enforced if it is included. There are penalties of up to \$33,000 for lodging a workplace agreement which includes such content.
- Every employee must receive a copy of the correct Information Statement as provided by the Office of the

Employment Advocate (OEA).

The Information Statement provides the employee with an overview of what constitutes a workplace agreement and also outlines the employee's basic rights and responsibilities under the workplace agreement.

- Every employee must have at least seven days to consider the proposed workplace agreement.
- Every agreement lodged must be accompanied by an Employer Declaration Form. In summary these forms are your declaration the information provided is true and correct and that you have complied with all your legal requirements.

For employers still struggling with the WorkChoices legislation the federal government has extended its WorkChoices Employer Advisor Programme (EAP) through to the end of 2006.

Through the EAP, employer and industry organisations provide information and practical assistance to employers and employees across Australia. They deliver advice to workplaces on how they can best utilise the Federal Government's WorkChoices reforms.

For more information about EAP call the WorkChoices Infoline on 1300 363 264 or visit the WorkChoices website (www.workchoices.gov.au).

Introduction of the Independent Contractors Bill

Recently, Workplace Relations Minister Kevin Andrews introduced two Bills into parliament - the *Independent Contractors Bill 2006* - the *Workplace Relations Legislation Amendment (Independent Contractors) Bill 2006*.

According to Minister Andrews these Bills were introduced to "enshrine and protect the status of independent contractors" by shielding them from state and territory industrial laws.

The Bill contains new protections for Australia's estimated 1.9 million independent contractors. Essentially the Bill will protect the right of these contractors to be truly independent. That is, to prevent them from being roped into state laws which effectively force them to be 'employees', not 'independent contractors'.

For independent contractors who have previously been "deemed" employees under state or territory law, there will be a three year transitional period to give businesses and workers time to adjust to the new legislation.

The relevant state or territory laws will continue to have effect until the end of the contracting relationship, or end of three years after the commencement of the Act if the relationship does not end before then or at any earlier time as agreed by the parties.

Regulation of unfair contracts

The Bill addresses more than just the regulation of unfair contracts. Provisions in the Bill will replace the existing federal unfair contracts legislation (currently in the *Workplace Relations Act*). Contractors will be able to go through the

Federal Magistrates Court where they believe unfair or harsh conditions have been imposed in a contract. This national approach overrides state unfair contracts legislation.

Accordingly it is for the courts to determine whether a person is an independent contractor or an employee as the Bill itself does not provide definitive definitions for these terms. The courts will apply the common law test looking at the whole relationship between the parties in the contract not just the written contract.

The Bill also includes limits on the types of independent contractors that can access the federal jurisdiction. Access is limited to those corporations where a director of the corporation, or member of the director's family, is the relevant person who mainly performs the work under the contract. The purpose of the limitation is to restrict large corporations bringing claims under the legislation.

Furthermore, recourse through the courts is not available where the contract relates to work performed for private and domestic purposes for the other party to the contract.

When determining if a contract undertaken by an independent contractor is unfair or unjust the court will take into consideration a number of matters including:

- The relative strengths of the bargaining positions of the parties
- Whether a party was subjected to any unfair tactics, undue influence or pressure
- Whether the contract provides for remuneration that is less than the remuneration of an employee performing similar work; and

- Any other relevant matter.

If the courts do find a contract is unfair and/or harsh they may make an order setting aside the whole, or part of the contract, or order varying the contract. There is also limited scope for the court to order costs. These costs are capped at \$10,000.

Excluded state and territory laws

The Bill also defines what constitutes and what does not constitute a workplace relations matter. It excludes a range of state and territory industrial laws deemed 'workplace relations' matters.

Matters that do not constitute workplace relations issues (ie: non-workplace matters) including discrimination, superannuation, workers' compensation, occupational health and safety, child labour, public holidays (and more) continue to come under state and territory laws.

Existing protections under WorkChoices

The provisions of the Bill outlined above are in addition to changes already introduced in the WorkChoices legislation. The legislation prohibits the inclusion of clauses in awards that restrict or impose conditions on the terms of engagement of independent contractors.

The government's hope is this new legislation will protect and enhance the freedom of Australians to engage in work as an independent contractor.

2006 tax time – ATO compliance focus

With the end of the 2005-06 financial year the Tax office has stated they will, once again focus on deductions for rental property expenses, capital gains

from the sale of property and other assets and work-related expenses.

According to Commissioner of Taxation Michael D'Ascenzo "We'll be looking at deductions for motor vehicles, self-education, home-office and travel expenses."

With regards to professions, the Tax Office will particularly focus on:

- Business professionals
- Hospitality industry service workers
- Factory, store and process workers
- Mechanical, automotive and electrical tradespersons
- Information technology professionals, and
- Mining site employees.

For more information go to www.ato.gov.au or contact Sharryn.

SME confidence in an era of rising interest rates and petrol prices

As interest rates and petrol prices continue to rise small businesses are becoming more nervous. A recent MYOB Australian Small Business Survey showed that despite four out of five businesses reporting that their operations are performing 'very well' or 'quite well', their outlook is not as optimistic, with only 24 per cent tipping the Australian economy is on the way up.

Furthermore, the MYOB survey found 31 per cent of small businesses also had a negative outlook on business costs, a jump of five per cent from the previous survey conducted in March 2006. This suggests

interest rates and business costs such as petrol prices, are driving the economic uncertainty for the future among small business.

The MYOB survey findings are supported by the May 2006 Sensis® Business Index which revealed business confidence among Australian small and medium enterprises (SMEs) fell dramatically for the quarter.

On a state-by-state basis Victorian businesses have been hit hardest with the lowest sales of any state according to the Index. The quarterly Sensis® Business Index is an ongoing series of surveys tracking the confidence and behaviour of Australia's small and medium enterprises (SMEs).

Given current business sentiment it is time for SMEs to keep an eye on the horizon and monitor all external forces - including petrol prices and interest rates - for their potential impact.

According to George Frazis, Executive General Manager of Business and Private Banking at the National Australia Bank "a business person has to ask how they will 'inflation-proof' their business, and deal with rising input prices and a tight labour market.

Businesses heavily reliant upon fuel, for example, can consider diesel swaps to offset further price increases. Labour-intensive businesses that face high wage costs could review hiring practices, perhaps leading to the outsourcing of some tasks."

According to Frazis, there are several ways for business owners and managers to improve their cash-flow.

1. Reduce 'lazy' cash - 'lazy' cash can be tied up in inventories. Reducing excess stock or obtaining stock on consignment can help free your cash.

2. Manage your inflows and outflows - receiving payment from your customers earlier and paying your suppliers later can both improve your cash flow position.

Managing your slow paying customers and your exposure to any one large customer is also important. Improving transactional banking can also help.

3. Get your financing right - short-term finance, such as an overdraft or invoice discounting, is designed to help manage weekly and seasonal variations. Longer-term finance should not be used to attack short-term cash flow problems because even if the lending rate is lower, the cost of unused funds is often greater.
4. Plan ahead - create a forecast. Estimate total cash receipts for the year as well as total cash disbursements for the year, month by month.

As real consumer spending power wains and growth in demand for goods and services slows, business owners should revise their plans to assess how they need to respond.

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