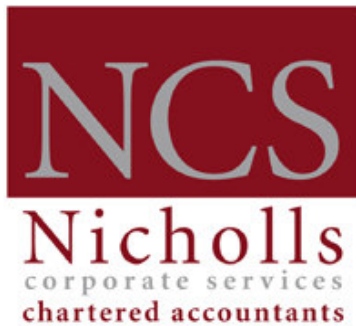


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# Client Information Bulletin

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## Winter 2006

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**Chartered Accountants**

## 2006-07 budget highlights for small business

The 2006-07 budget recently handed down by the Government has made many provisions for small business. This is a snap shot of some tax measures announced in the 2006-07 budget. It is *not* an exhaustive list of all the Government's small business provisions.

### Capital Gains Tax concessions

Commencing from 2006-07, the Government will improve the operation of the small business Capital Gains Tax (CGT) concessions by implementing most of the recommendations made by the Board of Taxation when they reviewed the small business CGT concessions. Those changes will affect:

- **The maximum net asset value test** where there is currently a limit of \$5 million on the net value of assets that a business and its related entities owns
- **The active asset test** which states the CGT asset must be an 'active' asset.
- **The 15-year exemption** which treats a capital gain as totally tax-free, provided the asset was held continuously for 15 years
- **The retirement exemption** – where the relevant person is more than 55 years old and retiring (or permanently incapacitated) at the time of the CGT event happening
- **The small business roll-over** – where the asset must be acquired within a set timeframe and also be active within a set timeframe to be acceptable as a replacement asset for the small business roll-over

- **How the concessions apply to partnerships.** For example in applying the maximum net asset value test in relation to interests in partnership assets it was unclear whether the test applied to the partner individually or to all of the CGT assets of the partnership.

The Government will also provide improved access to the small business CGT concessions by replacing the current 50 per cent controlling individual test with a 20 per cent significant individual test.

### Fringe Benefits Tax

As of 1 April 2006 the Fringe Benefits Tax (FBT) rate was cut to 46.5 per cent. In the 2006-07 budget further changes were announced with regards to the FBT thresholds. These changes, which will take effect as of 1 April 2007 include:

- Increasing the in-house fringe benefits tax-free threshold from \$500 to \$1,000
- Increasing the minor benefits exemption threshold from \$100 to \$300
- Increasing the reportable fringe benefits exclusion threshold from \$1,000 to \$2,000.

For more information about how the changes outlined above, and the other aspects of the 2006-07 budget will affect you, please contact our office.

## New bankruptcy measures to target avoidance

Tougher anti-avoidance provisions in the *Bankruptcy Act 1966* have been passed by the Federal Parliament to target people who dispose of assets in the lead up to bankruptcy.

The Attorney-General, Mr Ruddock said the changes toughen existing laws which allow the trustee to recover property disposed of prior to bankruptcy, or owned by a third person but acquired by that person using the bankrupt's resources.

Previously, people approaching bankruptcy could avoid these provisions by, for example, off-loading assets to family members and then deliberately delaying the bankruptcy; or by building up wealth in the lead up to bankruptcy in the name of a person who allows the bankrupt to use or benefit from property acquired with that wealth.

The most significant amendments will:

- Increase the claw back period in Section 120 of the Bankruptcy Act from two to four years for transfers of property by a bankrupt to a related entity for less than market value. This is because people may be aware that they are likely to become bankrupt more than two years before the event and, as a result, transfer assets to related parties to avoid creditors.
- Allow the bankruptcy trustee to recover consideration paid to third parties in some instances.
- Introduce a refutable presumption that the business was insolvent at the time of the transfer if it is established that the business had not kept and preserved proper accounts and records in relation to their business.
- Provide that a transfer made to defeat creditors is void against the bankruptcy trustee under Section 121 if it was reasonable for the transferee to infer that the

bankrupt's main purpose in transferring the property was to defeat creditors.

- Strengthen the trustees' ability to recover property or money from people, rather than just companies or trusts, which was acquired in the lead up to bankruptcy as a result of the bankrupt's financial contributions.

The changes strike a balance between the rights of the debtors and creditors. It addresses the concerns which bankruptcy trustees had with existing legislation, while at the same time recognises the validity of prudent asset protection arrangements which many professional people have in place.

## Implications of WorkChoices on employment contracts

As part of the Federal Government's new *Workplace Relations Amendment (WorkChoices) Act 2005* introduced on 27 March 2006 The Australian Fair Pay and Conditions Standard (also known as 'the Standard') was established and will apply to most employees.

There are five minimum conditions in the Standard. They are:

1. A federal minimum wage, minimum award classification rates of pay, and casual loadings set by the Australian Fair Pay Commission
2. 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

3. Ten days paid personal/carer's leave and two days compassionate leave per year
4. Up to 52 weeks unpaid parental leave (maternity, paternity and adoption)
5. 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.

All new workplace agreements or Collective agreements will have to include conditions at least as generous as those outlined in the Standard. A term of a workplace agreement or contract attempting to exclude one of the entitlements, or part of it, will have no effect.

While all employees will be entitled to parental leave everything else in the Standard applies only to constitutional corporations.

Employers who are **not** constitutional corporations may include:

- Sole traders
- Partnerships
- Certain State Government public sector employees
- Corporations whose predominant activity is not trading or financial.

Employers who are constitutional corporations and who currently operate in the state system will have up to a three year transitional period in which their current state awards and/or agreements will continue to apply.

Employers who are not constitutional corporations, but are currently in the federal system by virtue of the conciliation and arbitration power, will have a transitional period of up to five years to incorporate or move to the state system.

The new federal laws will mean that state laws no longer apply to employees in the federal system, with the only exceptions being those state laws the federal Government permits to operate.

### **Wages and the Australian Fair Pay Commission**

The Australian Industrial Relations Commission (AIRC) will no longer have power to set minimum wages across the award system through the national wage case. The Australian Fair Pay Commission (AFPC) now takes over this role.

The AFPC will set and adjust the minimum wage, and wages across award classification levels, as well as wages for junior, apprentices and trainees, employees with disabilities, piece workers, and loadings for casual workers.

The AFPC will fix wages at or above the level of the current minimum wage set by the AIRC in the 2005 national wage case.

### **Agreement making**

Federal collective agreements and individual agreements (Australian Workplace Agreements - AWAs) will continue under the new federal laws with a nominal term of five years. Federal agreements however will no longer have to pass a no-disadvantage test before being approved.

To be approved, agreements will only have to meet the Australian Fair Pay and Conditions Standard. The AIRC will no longer have any role in scrutinising agreements. Instead the Office of Employment Advocate will be responsible for accepting all agreements when lodged.

Agreements will be able to remove or modify seven current award entitlements. They are:

- Public holiday pay
- Rest breaks

- Overtime/shift loadings
- Annual leave loading
- Incentive-based bonuses and payments
- Allowances
- Penalty rates

without any compensating benefits.

If an agreement is terminated and not renegotiated, the employee will fall back to the minimum conditions under the Australian Fair Pay and Conditions Standard and the seven protected award conditions (unless the workplace agreement expressly modifies or excludes all or part of the seven protected conditions).

Agreements made under the old system will continue to operate, except that prohibited clauses will be removed. However these existing agreements can not be varied or extended now that the legislation is in force.

### **Dispute resolution**

Under the Alternative Dispute Resolution Assistance Scheme (ADRAS), parties to eligible disputes are able to receive up to \$1,500 (GST inclusive) of Government assistance towards the cost of private Alternative Dispute Resolution (ADR) services.

ADR providers are those that, for example, offer conferencing, mediation, assisted negotiation, neutral evaluation, case appraisal, conciliation, or arbitration services.

Under the Government's WorkChoices legislation, employees and employers now have a choice between referring certain disputes to a private alternative dispute resolution (ADR) practitioner or the Australian Industrial Relations Commission (AIRC) for assistance.

Employers and employees will be able to choose whether or not

to go to the AIRC or a private ADR provider for disputes:

- About the application of awards, agreements, the Australian Fair Pay and Conditions Standard, workplace determinations and legislated minimum entitlements to parental leave, meal breaks and public holidays
- Arising during negotiations for a collective agreement, and
- Arising where a bargaining period has been terminated in the public interest or suspended to provide a 'cooling off' period.

To ensure access to the Scheme for parties located in regional or remote areas, an additional \$500 (inclusive of GST) will be available to meet reasonable travel expenses for ADR providers travelling to regional and remote areas to provide ADR services.

The effects of the new WorkChoices legislation have been felt since its introduction. For more information about WorkChoices and the Australian Fair Pay and Conditions Standard go to [www.workchoices.gov.au](http://www.workchoices.gov.au)

## **Franchisor disclaimers – written contracts prevail**

A ruling by the full Federal Court held that disclaimers did operate to protect franchisors from claims of misleading and deceptive conduct.

In one case a franchisee tried to recover damages following the termination of their franchise agreement. The termination resulted from the franchisee's inability to maintain sales levels in accordance with the target

expectations contained in the franchise agreement.

The franchisee argued that the ultimate failure of the business was influenced by a number of oral statements and information provided by the franchisor during original negotiations. The franchisee claimed it had relied on the following representations made by the franchisor and the master franchisee regarding:

- The site selection; and
- The different levels of sales and profit margins that could be achieved.

As the franchisee had conducted its own due diligence, obtained independent expert advice and had previous business experience, the Federal Court was of the opinion that the franchisor's representations did not amount to misleading and deceptive conduct due to the existence of comprehensive disclaimers.

The Federal Court held that legal liability for misleading and deceptive conduct could be avoided by relying on disclaimers and qualifications contained in franchise documents.

## Backpackers to be allowed to work longer at one job

The Working Holiday Program provides opportunities for people aged between 18 and 30 to holiday in Australia and to supplement their travel funds through incidental employment.

Australia has reciprocal Working Holiday Maker arrangements in effect with the United Kingdom, Canada, the Netherlands, Japan, Republic of Ireland, Republic of Korea, Malta, Germany, Denmark, Sweden, Norway, the Hong Kong Special

Administrative Region (HKSAR) of the People's Republic of China, Finland, the Republic of Cyprus, France, and Italy, Belgium, Estonia and Taiwan.

From 1 July 2006 several changes will be made to the Working Holiday Maker Programme (WHM) (visa subclass 417). Two significant changes include:

- Increasing the work limitation with each employer from three to six months; and
- Increasing the study/training limitation from three to four months.

These changes apply only to WHM visa applications lodged on or after 1 July 2006.

Extending the work and study/limitation timeframes will help employers retain quality workers for longer and reduce turnover costs for employers.

## Child care tax rebate reminder

As part of the Government's *Tax Laws Amendment (2005 Measures No. 4) Act 2005* parents are reminded the 30 per cent child care tax rebate is available. It helps families reduce their costs for approved child care.

The rebate is 30 per cent of the parent's out-of-pocket child care expenses incurred with a maximum rebate of \$4,000 per child per year per primary claimant. Out-of-pocket child care expenses are the total child care fees less the child care benefit (CCB) entitlement. The rebate is a non-refundable offset which can only reduce your tax liability to nil. You cannot get any of the unused amount of the rebate refunded to you.

If you are eligible, you can start to claim the rebate in your income tax return for the year ended 30 June 2006. You will be able to claim for the out-of-pocket expenses you incurred from 1 July 2004 to 30 June 2005 in this return. You are required to have kept records of approved child care expenses incurred throughout the income tax years.

You may be eligible to claim the rebate if you:

- Received the child care benefit (CCB)
- Passed the work/training/study test, and
- Used approved child care such as long day care, family day care, in-home care, outside school hours care, vacation care, and some occasional care services.

To pass the work/training/study test you and your spouse must either be working, performing voluntary work, looking for work, training or studying. Meeting the work/training/study test means you are eligible to claim up to 50 hours of CCB per child per week.

For more information about the rebate contact the Family Assistance Office on 13 61 50.

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