

Autumn Edition
March 2007



matthew tol + associates

Information Update

We recently attended a presentation on "Corporate Governance" and the issues which Directors, Partners and Trustees need to concern themselves with in regard to the management of their business. For the business to act as an effective one, it is recommended that a Board be established which carries out specific duties with respect to the strategies and vision for the business. The Board can be formal, or informal (an Advisory Board). In planning and operating this structure, the Directors/Partners should be concerned with

questioning the overall strategic direction of the business and the business's progress against that strategy, observing issues regarding the business without judging—effectively gathering any and all information about the business to enable the Board to perform at an appropriate level and have an open view on everything (not approaching issues with fixed views).

One other issue which was raised was the need to review the constitution of the Company/Partnership Agreement and/or Trust

Deed to ensure the business is acting within the authorised activities per those documents. It is often the case (particularly with older entities) that the business rules are breached inadvertently.

Should you wish to discuss the establishment/operation of a formal or Advisory Board or for a review of your business rules (Constitution etc), please contact us. We do point out that where clients have Advisory Boards in place, they are performing exceptionally well.

Record Keeping Requirements

The *Workplace Relations Regulations 2006* (**Regulations**) impose significant record keeping obligations on federal system employers in respect of employees. These obligations are far more extensive than those that previously existed.

Late last year, the Regulations were amended to extend the time employers have to comply with the record keeping requirements. Prosecutions of employers for breaches of the record keeping provisions may now commence from **27 March 2007**.

Penalties of up to \$2,750 for each offence may be ordered and actions may be commenced by a workplace inspector.

Records must be kept in relation to general employee information, pay, leave, superannuation contributions, termination of employment and hours of

work. However, in relation to records relating to hours of work, previous amendments to the Regulations now require employers to keep records relating to:

- the total number of hours worked by an employee only where the employee earns an annual salary of less than \$55,000 (indexed annually); and
- daily start and finish times only where overtime is payable to the employee under any form of industrial instrument.

In addition, the Regulations specify that when a transmission of business takes place, certain records relating to employees must be transferred from the old employer to the new employer, and the new employer must keep the transferred records as if they had been made by the new employer.

Lessons for employers

- Employers should ensure that they are aware of and are complying with their record keeping obligations.
- Prosecutions for breaches of the record keeping requirements may commence from 27 March 2007.
- While the Regulations have limited the situations in which employers are required to keep records relating to hours of work, all federal system employers are required to keep records relating to general employee information, pay, leave, superannuation contributions and termination of employment irrespective of the employees' level of remuneration or their entitlement to overtime.



Disclaimer:

The contents of this publication are general in nature and we accept no responsibility for persons acting on information contained herein.

Recent Tax Office Developments

Terminating an employee for genuine operational reasons

Unfair dismissal claims only apply to companies with 100 employees or more. In those instances the claim is heard by the Industrial Relations (IR) Commission. Irrespective of the company size however an employer can terminate an employee 'for genuine operational reasons or for reasons that include genuine operational reasons' under Section 643(8) of the *Workplace Relations Act 1996 (Cwlth)*. The IR Commission has no jurisdiction here.

Checking up on a company

When dealing with a company or investing in one, it often pays to check the public record for recent documents that the company has sent the Australian Securities and Investments Commission (ASIC) as the

documents available on public record can be insightful.

Blackhole expenditure

Blackhole expenditure, as defined by the Government, occurs when business expenses are not recognised under the income tax laws.

Standard business reporting

The Government has announced a new initiative aimed to provide a significant and sustained reduction in the business to government reporting burden.

Employer obligations checklist

When an employer ceases to work for you there are several obligations you must meet. They cover eligible termination payments (ETP), fringe benefits tax (FBT), pay as you go (PAYG) and superannuation.

Click on item headings for further information

Recent Fair Trading Issues for Employees

The Victorian Fair Trading Act 1999 ("FTA") contains provisions similar to section 52 of the Federal Trade Practices Act 1974 ("TPA"). Section 9 provides that, "A person must not in trade or commerce engage in conduct that is misleading or deceptive or is likely to mislead or deceive." The recent case of *Houghton v Arms*, (2006) HCA 59 (12/12/06) shows just how extensive the FTA's provisions in relation to misleading and deceptive conduct can be.

The claim arose when the respondent, Mr Arms, alleged that two employees of a website designer, WSA, represented that the inclusion in the respondent's website of a financial transactions product (ANZ e-Gate) would enable its customers to pay their accounts by way of major credit cards and that these payments would clear directly into the accounts of particular wineries on payment of a small transaction fee. This meant that the respondent's customers benefited from low sales tax and avoided any mark-up charges by distributors as would normally be expected. Various representations were made by Houghton and his fellow employee, Student, to Arms as to how the e-Gate licence would work. Arms agreed to the inclusion of the e-Gate facility in its website as a consequence.

At a later time, WSA then informed Arms that a mistake had been made and that each customer winery of Arms had to become an accredited merchant with the e-Gate bank and all other credit providers which involved providing accounting documentation and a business plan to each credit provider. It was impossible for Arms to arrange for each customer to comply with the various conditions. To preserve the credibility of its business, Arms converted itself into a retailer with its mark-up only limited to 5%, this being the rate that Arms told its customer wineries would be charged under the system. Sales tax was also payable at a higher rate as a result of these changes.

Arms operated its business at a loss for 12 months before changing its business structure to prevent further losses. Arms sued WSA and *its two employees* for the damages. Ordinarily, it would be expected that if the employees were acting in the course of their employment with WSA in making the representations that their employer, WSA, would be responsible and liable for their actions.

The case made its way to the High Court where it was held that while the employees were not proprietors of the business, their conduct fell within the ambit of section 9 of the FTA and judgment was entered against the employees as well as the employer, WSA. The case is a warning to both employers and employees alike to take care in the representations they make to others in the course of their business.

Reminder about our superannuation seminar

We have attached our invitation to the above on the next page. We urge you to attend as this is your chance to make the most of the changes before 1 July 2007.

Some Jokes...

This is a transcript of the ACTUAL radio conversation between the British and the Irish, off the coast of Kerry, Oct 98. Radio conversation released by the Chief of Naval Operations 10-10-01:

Irish: Please divert your course 15 degrees to the South, to avoid a collision.

British: Recommend you divert your course 15 degrees to the North, to avoid a collision.

Irish: Negative. You will have to divert your course 15 degrees to the South to avoid a collision.

British: This is the Captain of a British navy ship. I say again, divert YOUR course.

Irish: Negative. I say again. You will have to divert YOUR course.

British: This is the AIRCRAFT CARRIER HMS BRITANNIA! The second largest ship in the British ATLANTIC FLEET. We are accompanied by THREE DESTROYERS, THREE CRUISERS, and numerous support vessels. I DEMAND that you change your course 15 degrees North. I SAY AGAIN, that is 15 degrees North, or COUNTER-MEASURES WILL BE UNDERTAKEN to ensure the safety of this ship.

Irish: We are a lighthouse. Your call.

These quotes were taken from actual Federal (US) employee performance evaluations.....

"Since my last report, this employee has reached rock bottom and has started to dig"

"His men would follow him anywhere, but only out of morbid curiosity"

"I would not allow this employee to breed"

"This employee is really not so much of a has-been, but more of a definite won't be"

"Works well when under constant supervision and cornered like a rat in a trap"

"When she opens her mouth, it seems that it is only to change mascara"

"He would be out of his depth in a parking lot puddle"

"This young lady has delusions of adequacy"

"He sets low personal standards and then consistently fails to achieve them"

"This employee is depriving a village somewhere of an idiot"

"This employee should go far, and the sooner the better"

"Got a full six-pack, but lacks the plastic thing to hold it all together"

"He certainly takes a long time to make his pointless"

"I would like to go hunting with him sometime"

"He's been working with glue too much"

"He would argue with a signpost"

"He has the knack for making strangers immediately"

"He brings a lot of joy when he leaves the room"

"When his IQ reaches 50, he should sell"

"If you see two people talking and one looks bored, he's the other one"

"A photographic memory but with the cap over the lens"

"A prime candidate for natural de-selection"

"Donated his brain to science before he was done using it"

"If he were any more stupid, he'd have to be watered twice a week"

"If you give him a penny for his thoughts, you'd get change"

"If you stand close enough to him, you can hear the ocean"

"It's hard to believe that he beat out 1,000 other sperm"

"Takes him 12 hours to watch 60 Minutes"

"The wheel is turning, but the hamster is dead"

Superannuation Seminar



matthew tol + associates

There is a lot of information in the media at the moment about the changes to superannuation which will take effect from 1 July 2007 and the planning opportunities which are currently available.

The issue seems to confuse most people. In the interests of making sure you are as well informed as possible, we have arranged for a seminar where the superannuation changes will be addressed and explained.

We have arranged for two highly experienced and regarded superannuation experts to present at our seminar to enable you to make some sense of the changes and get some clarity regarding your position. The information at the seminar will be presented simply, non-technically and there will also be the opportunity to ask questions of our experts.



You are more than welcome to bring any friends, family or associates—all we ask is that you let us know when you RSVP to allow us to finalise catering.

We look forward to seeing you there!

Guest Speakers

Chris Ketsakidis

Chris is the Principal at Maurice Blackburn Cashman Commercial Lawyers, and advises a range of participants in the superannuation industry, including public offer superannuation funds, industry funds, corporate funds and pooled superannuation trusts.

Denis O'Callaghan

Denis is the Principal at Alliance Wealth Management and advises a range of clients (including clients of our firm) with their financial planning, investment and wealth development strategies. He has particular expertise in superannuation and planning opportunities around this structure.

There is no charge for attending this seminar, but we ask that you donate \$5 per attendee at the door and we will pass on all the proceeds to The K-I-D-S Foundation.



Date: Wednesday, 2 May 2007

Time: 6.30pm for 7pm start

Venue: GeeCees (upstairs) Cnr Sturt & Dawson Streets, Ballarat

RSVP: Danielle or Helen on (03) 5333 3799 or email helen@mt.com.au prior to 26 April so that catering arrangements can be finalised

Refreshments: Beer, wine, tea, coffee and finger food

