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## **May 2006 Newsletter**

*This newsletter deals with the Budget Superannuation Proposals, the New Work Choices System and the Intellectual Property Laws Amendment Bill 2006*

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### **SUPERANNUATION THE BUDGET PROPOSALS**

#### (a) Background

A criticism of superannuation has been that when the tax imposed at all levels are added up, there is no real "tax benefit". This is because:

- deductible contributions are subject to tax at 15% to the trustee of the fund;
- income derived by the trustee of the fund is subject to tax at 15% (assuming assets of fund are not funding a pension); and
- where benefits are taken as a lump sum, 16.5% tax (including Medicare levy) applies, whilst if a pension is taken, a 15% rebate applies (which, on the top marginal rate of tax, means the pension is subject to tax at 33.5%).

The complexity of the superannuation system has also be criticized as to:

- the tax treatment of various types of benefits;
- the different rules as to when payments can be made; and
- the distinction between the deductibility of employer and self employed persons contributions.

As part of the May Budget, the Treasurer announced proposals that deal with the above aspects. Details of the proposals are found in a paper titled "A Plan to Simplify and

Streamline Superannuation". Most of the proposals have effect from 1 July 2007.

#### (b) Outline of proposals

##### (i) *Taxation of benefits*

In what is probably one of the most dramatic changes in superannuation in the last 20 years, the Government proposes to abolish taxation of benefits, whether by way of a lump sum or pension, where the member is aged 60 or over. Further, it is proposed that the concept of "excessive benefits" (which attract a higher rate of tax when received) will no longer apply due to the abolition of "reasonable benefit limits" ("RBL").

When the benefit is taken before the member attains the age of 60, it is proposed that both the tax-free component of the lump sum and pension benefit is increased. Further, if the pension commences before the age of 60 and continues to be paid when the member attains the age of 60, the pension has a tax-free status after that age.

It is also proposed any lump sum benefit paid to a dependant (on death) is tax-free (and not just the benefit up to the pension RBL). Reversionary pension payments made to a dependant are also tax-free if the primary beneficiary was aged 60 or over at the time of death or the reversionary beneficiary is aged 60 or over. Benefit payments made to non-dependants are taxed at 16.5% with, again, there being no adverse taxation of any "excessive component".

(ii) *The payment rules*

The proposal is to abolish compulsory payment of benefits to members at the ages of 65 and 75 respectively (which, under current law, depends on work status). The changes mean that a person can keep their benefits in a superannuation fund indefinitely and, in particular, use the superannuation fund for estate planning.

It is also proposed that simplified pension rules be introduced where, in essence, certain minimum payments have to be made annually with no maximum cap. For example, for a member between the ages of 55 and 64, the proposed minimum annual pension payment is 4% of the account balance.

(iii) *Deductibility of contributions*

It is proposed that the present aged based deduction limits for deductible contributions be removed and replaced by a flat \$50,000 per member per annum. Deductible contributions will continue to be taxed as a "taxable contribution" at the rate of 15% to the trustee of the fund. Superannuation contributions can be made until the age of 75 regardless of whether the member works.

In addition, it is proposed that contributions made by self employed persons will be fully deductible and not have the non-deductible 25% gap.

As a transitional measure, where a person is aged 50 and over during years ended 30 June 2008 to 30 June 2012, the deductible contribution is \$100,000.

However, it is proposed that a limit will be placed on undeducted contributions. The proposed limit is \$150,000 per year, which will apply from 9 May 2006.

(c) Funding retirement

The proposed changes should dispel any doubt that a superannuation fund should be

used as the basis of tax effectively funding the amount required for retirement.

**Greg Ganz**

**Email:** [greg@parrycarroll.com.au](mailto:greg@parrycarroll.com.au)

**Phone:** 8257 3111

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**INDUSTRIAL  
RELATIONS/EMPLOYMENT  
NEW WORK CHOICES SYSTEM**

On 27 March 2006, the new Work Choices system commenced. Work Choices covers approximately 85% of employees, including company and Australian Government authority employees. Employees of unincorporated businesses are not affected by Work Choices. Premier Iemma has introduced legislation to ensure approximately 180,000 NSW employees remain employees of the Crown and are governed by the NSW *Industrial Relations Act*.

(a) Unfair dismissal claims

Work Choice introduces a 6-month qualifying period before employees become entitled to make a claim.

Employees employed by a Work Choice employer with 100 employees or less will be unable to bring an unfair dismissal claim. The number of employees is determined by a head count of the employer's workforce at the time of the affected worker's termination. The employee must also earn less than \$94,900 per annum.

Employees engaged for a specified period of time or task, under a fixed term trainee agreement, casual employees engaged for a short period and employees on probation cannot make a claim. Employees who have their employment terminated for "operational reasons" (defined as economic, technological, structural or similar nature) are also excluded from making a claim.

If the termination is by reason of misconduct, the Commission is able to reduce

compensation to take into account the employee's misconduct.

(b) Record Keeping

The increased record-keeping obligations include:

- nominal daily hours and variations for full time and part time employees and payments; and
- time recording for all employees (including those who don't work fixed hours such as managers with nominal hours and variations fully detailed).

The records will have to be kept for 7 years.

(c) Australian Fair Pay and Conditions Standard ("AFPC Standards")

Existing workplace agreements remain valid for up to 3 years. The AFPC Standards will replace awards as the framework of workplace agreements. Certain award provisions will remain, but will not be able to be varied, such provisions include long service leave, superannuation and notice of termination.

Various matters are non-allowable award matters including:

- some restriction on the capacity for unions to participate in dispute settling procedures;
- the ruling out or limitation on the use of particular types of employment;
- minimum or maximum hours for regular part time employees; and
- limitations on the hiring of independent contractors or labour hire operators and requirements for their terms of engagement.

Work Choices will provide minimum conditions for employees with minimum wages being set by the AFPC creating the AFPC Standards. This standard consists of:

- minimum wage levels;

- 4 weeks annual leave (by agreement, 2 weeks can be cashed out);
- 1 week's additional leave for continuous shift workers;
- 10 annual days of paid personal leave (if exhausted, 2 days additional unpaid carer's leave);
- 2 days unpaid carer's leave for casuals; and
- 2 days paid compassionate leave per occasion.

It will also be unlawful for an employer to require an employee to work more than 38 hours per week plus reasonable overtime.

(d) High Court challenge to the validity of the legislation

A number of the States and other intervening parties have lodged constitutional challenges in the High Court to the validity of the reforms introduced by Work Choices. The matter is presently being heard by the High Court.

**Chris Perry**

**Email:** [chris@parrycarroll.com.au](mailto:chris@parrycarroll.com.au)

**Phone:** 8257 3175

**INTELLECTUAL PROPERTY LAW  
PATENT AND TRADEMARK PROPOSALS**

The *Intellectual Property Laws Amendment Bill 2006* has been introduced into the House of Representatives. It proposes changes to Australian patent and trademark law.

The changes proposed include:

- pharmaceutical patents will not be infringed by any use solely for gaining regulatory approval of a pharmaceutical product in Australia or another territory. This exemption may, for example, cover bio-equivalence studies, and will no longer be limited to a patent extension period;

- new provisions for compulsory licenses where someone is guilty of anti-competitive conduct under the *Trade Practices Act*;
- the Courts will be allowed to order exemplary damages in patent infringement matters for flagrant infringement;
- there are some changes in relation to the prior use defence;
- there are changes to allow access to trade mark documentation without the need for a freedom of information application;
- there are changes in the procedures for certification marks – these are trade marks which distinguish goods or services which meet certification standards set by the owner of the certification trade mark, rather than distinguishing the goods or services actually provided by the trade mark owner;
- there is now a simpler procedure for rectification of errors in a trademark registration.

**Selwyn Black**

**Email:** [selwyn@parrycarroll.com.au](mailto:selwyn@parrycarroll.com.au)

**Phone:** 8257 3113

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