



**S U B M I S S I O N**

**TO**

**THE**

**PRODUCTIVITY COMMISSION**

**ANNUAL REVIEW OF**

**REGULATORY BURDENS ON BUSINESS**

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**National Independent**

**Retailers Association**

**(NIRA)**

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## **NIRA background**

The National Independent Retailers Association (NIRA) is currently made up of member Associations from around Australia working together to represent and promote the interests of independent retailers throughout the nation.

NIRA seeks to promote, by combined action, the development of the independent retail sector, providing representation to Government at a Federal level and assisting in the protection of small business retailers.

NIRA represents members from the independent retail sector throughout all states of Australia.

NIRA is affiliated nationally to:

- The Council of Small Business Organisations of Australia (COSBOA) and;
- The National Association of Retail Grocers of Australia (NARGA).

## **Support of NARGA and QRTSA submissions**

NARGA (for federal issues) has provided detailed analysis and comments over a number of years to this issue and we support their views and do not wish to repeat much of what they have presented. We also strongly support the submission from the Queensland Retailers Association (QRTSA).

## **Examples of red tape**

At Attachment A of this submission is an indicative list of red tape requirements from various government agencies. We hope this list provides a clear signal of the difficulty and indeed impossibility for most small business operators of being 100% compliant.

A more particular example of the impact of red tape on a small business is by documenting the regulations confronting a typical Victorian furniture retailer. This person operates a shop front, maintains a storage warehouse, occasionally repairs/touches up furniture for customers or to improve the value of stock, and completes their own deliveries. The regulations and compliance demands are mind numbing. What should be the most important activity for this person, which is the running of a business, managing and training employees, maintaining a cash flow and dealing with customers and suppliers, is threatened by the demands of a non paying non supportive customer – the government. Here are the regulations that retailer needs to comply with:-

- Textile care labelling (mandatory)
- Safety Standard for Bunks (mandatory)
- Safety Standard for Nursery Furniture (cots mandatory)
- Recliner Chair Safety Standards (mandatory in New South Wales soon to extend to Victoria)
- Leather Labelling Standard (not compulsory yet)
- Flammability labelling of fabrics (not compulsory yet)
- Country of Origin labelling (necessary for truth in advertising)
- Business name registration

- ASIC compliance including annual return, re-registration of business and corporate details and annual meeting general requirements
- All taxation matters including GST, FBT, BAS lodgements and personal income tax (see further examples of tax demands in attachment A)
- APRA and PPCA licenses
- Industrial Relations Laws which differ from the training and management requirements for employees
- Superannuation requirements
- Occupational Health and Safety regulations
- Second-hand Dealers licence
- Poisons Register compliance (due to the use of thinners for working on furniture)
- Dangerous Goods compliance (due to the use of thinners and lacquers)
- Heavy Vehicle (truck) licence
- Forklift drivers licence

Other legislation which the retailer must be particularly aware of includes the Victorian Fair Trading Act, the Trade Practices Act and the Retail Leases Act.

Management of the above activities is difficult for a large company with specialist employees, for a small business it is impossible. These demands will almost ensure non compliance from a small business operator due to the physical impossibility to achieve all these tasks. The question needs to be asked – does government want small business operators to be complaint or to be profitable and successful? More and more the answer seems to be compliance.

### **Small business is different from large/medium business and needs a different response**

Small business needs to be better understood and supported if government regulation is to achieve its aim – the protection of consumers, effective OH&S, the payment of tax and adherence to corporate and business related laws, as well as the most efficient operation of business. Regulatory burden on small business will be easier to assess and manage when its true impact is measured, and small business needs are properly understood.

At present nearly all legislation and process is designed for all business, large and small, without, in most cases, any major difference in the implementation and process involved. This policy is bound to create problems and to fail. Small business and large business are inherently different in the way they behave, react to change and deal with business issues.

Why are rules and regulations and process so often the same for a big business as for a small? For example, under the now defunct workchoices legislation it seemed that a firm with 99 employees had the same issues as a firm with 1 employee, which is ridiculous.

Workchoices provides a further example of how regulation can destroy a small business, or at least provide unnecessary stress on a small business owner. The original workchoices legislation was long and difficult to read and understand, even

for an expert. The concept was attractive to small business due to the promotion of its flexibility, but understanding all the legislation was not something that was achievable for small business operators.

Then the legislation was changed, overnight, due to electoral pressure. As much as large and medium businesses may have complained about this change they had expert staff employed to manage the process and ensure the change was smooth. Small business operators had to somehow understand the process, implement activities and then overnight change their understanding and processes while at the same time selling products, developing products, marketing, completing GST returns and numerous other business activities. The workchoices process showed that legislators do not take small business into account when developing or changing process. They consider all business to be the same and have the same capacity.

Even though the Work Choices legislation is now past history we need to ensure that its replacement is easy to understand and manage for small business operators. We need to develop a process that recognises the fact that big and small businesses are very different.

Another example of legislation that has the, hopefully, unintended negative impact on small business is that of corporate law. Small businesses who are a company will often have one shareholder or perhaps two. Under the legislation it appears that they must hold an annual general meeting or face a fine. Under the law it appears that they must sit in a room somewhere and meet with themselves, take minutes, pass resolutions and behave as if they are a crowd of people. Do governments truly expect a small business operator to have a meeting by themselves when they could be selling products or spending time with their families? Perhaps the legislation was not developed with small business in mind?

### **Small business behaves like a consumer**

Small business should be thought of as an individual or perhaps two people (a husband and wife, a mother and son etc). Small business is more often than not a family business run by key family members.

As a result, and not surprisingly, small business will behave and react like an individual. Small business does not have a board of Directors or a senior management team or employees with expertise in tax or corporate law or human resource management. All these skills and expertise will need to exist in one person for a small business to react the same way as large or medium business or will need to be purchased at some cost.

We need different regulations, rules and process for small business. In the QRTSA submission to this review it suggests that business with less than 20 employees can be treated differently for certain regulatory issues. We support the notion that the size of a business will impact on its capacity to interpret and respond to legislation. If the same rules and process exists for BHP and for a one person furniture shop than it should not be surprising that the small business will not understand all the legislation, or have time to read and understand the legislation. BHP will have the corporate resources to devote time to understanding the legislation or at least have the capacity

to argue with what the legislation means. So why expect a large multinational organisation and a single owner business to act the same and understand issues the same way?

We understand that new policy and new policy proposals are meant to have a statement on their impact on small business but it is obvious that these statements are not being completed; the comments are not realistic or are they are being ignored. Perhaps the comments are sought from organisations that do not truly represent the needs and views of small business?

### **The role of supporters of small business**

The submissions from the QRTSA and NARGA have highlighted the role and attitudes of politicians and bureaucrats in the development and assessment of regulations. It is certainly true that some, perhaps many, politicians and bureaucrats have scant regard for small business operators. We also believe that the submissions from many of the larger peak bodies who represent, in the main, big business do not reflect the need of small business operators. Small business operators are seen as a nuisance, as lacking in understanding and skills and as people who need to improve their business capacity.

Common statements from politicians, bureaucrats and representatives from big business include:

*Small business operators need to become better managers* – Doesn't everybody need to improve their skills? Is this a way of asking a small business operator to have the same knowledge, resources and capacity as a large business? This type of statement is a way of passing the blame onto small business operators for the lack of understanding by the people who develop and implement policy.

*If a small business falls over then there is always someone there to take their place* – This statement explains why 'churning' in franchises has been allowed to happen for so long. This statement shows a lack of concern about why businesses do fail and the impact of that failure on families and on communities. People with this attitude will never understand how to develop small business friendly processes and legislation.

*What is wrong with small business? We offer support and no one accepts it* – This statement is often made by politicians, bureaucrats and big business representatives who promote small business support activity as they would to the large business and wonder why small business does not respond. These people are willing to blame over 1.8m people for their own lack of understanding of how to communicate with small business.

*If they go into business then they have to wear the consequences, if they fail they should expect no sympathy or support* – This statement comes from people who see big business and small business as the same and who have no understanding of the impact of business failure. They also do not understand that a small business with poor management skills will often quickly cease trading naturally. Other reasons for failure, or for poor profit margins, come from the impact of outside influences such as the opening of new shopping malls (without any business impact study); the introduction of new legislation that is confusing and potentially financially damaging

(eg GST, workchoices); a family crisis that can be managed in a large company but will leave a small business operator with major problems; the difficulties of cash flow management, negotiating bank loans and running a business at the same time particularly during the early start up phase of a business; and there are many other examples.

The true supporters of small business understand that small business cannot be placed into the same bucket of behaviour as big and medium business. Indeed the almost 2 million small business operators that exist need to be divided even further into different groups to truly assess the impact of regulation and how to make regulation better. Owner drivers in the transport industry will have different issues and needs than retailers in country areas. Home based businesses working on information and communication technology will have different needs and communication techniques than people with trades' skills operating a one person business from a home office where the 'wife' completes the paperwork.

All this needs to be considered if the effect and cost of regulation is to be assessed and decreased.

#### **Positive response from the ATO and ACCC**

It should be noted that the Australian Taxation Office is taking practical steps to improve their interaction with, and understanding of, small business. Taxation is one of the greater impositions on the time of small business operators, particularly through the process and knowledge needed for GST, superannuation and fringe benefit taxes. The ATO is aware of this and offers excellent support to small business. This support has not been taken up to the degree that the ATO would like. The ATO is actively seeking reasons why small business operators are difficult to engage and what they can do to improve their interaction, rather than assuming fault is with the small business operator. The ATO has started work, in partnership with COSBOA, on developing better ways of communicating and engaging small business through partnership with the business associations that have small business as their main members. This approach is currently being trialled with various associations and should be used to help develop better ways of assessing the impact of regulation.

The ACCC has also started a process of gathering more information on small business and targeting particular industry groups rather than the whole range of small business operators. This will hopefully impact upon the way red tape is managed at key stress moments for small business such as signing leases, franchise agreements and financial contracts.

#### **The need to assess and change legislation**

NIRA still has a number of concerns regarding current legislation and current regulatory trend. We believe that the processes involved in the development of policy and legislation need to be revamped as a primary means of ensuring that the costs of the regulatory burden on small business and the community can be minimised. There almost 2 million small businesses in Australia. This could equate to anywhere between 1.5m and 2.5m individuals who are involved in running that business, and potentially 3m to 4m family members relying upon the income from that business, not counting employees. That is around 15% of the population. This is not an insignificant figure. The needs of these business operators, their time and their ability

to access and understand regulations should be considered when changing and developing new rules for business.

### **What is it like to confront red tape?**

Attached to this submission is a list of requirements that may or may not have to be met by small business operators in the day to day business activities ([Attachment A](#)).

Imagine that you, the reader of this attachment, are a small business owner and determine what chance you have of understanding and meeting the needs of all these bits of legislation. It is impossible. As a result many rules will be broken due to a lack of understanding, a lack of money and a lack of time needed by small business operators to sit down and read every page and consult dictionaries, thesauruses and experts to understand if there is a requirement for their business. It also creates fear that a rule or regulation is being broken because the individual isn't aware of that rule.

For example a small retailer maybe on holidays overseas and spots some item that can be sold in Australia, most independent retailers would know 'just the customer' who would want this particular item (small business operators are normally in close touch with their customers). The retailer purchases the furniture and has it sent back to the shop. This business owner has never before purchased from overseas but is all of a sudden confronted with a whole range of issues to do with import, tax, quarantine and transport costs and regulations. Does she/he consult an expensive expert? Does she/he ignore the rules? What does she/he do? Where does she/he go for help? Does she/he have the time and money and to access advice? Perhaps she/he should have just ignored the goods and the needs of the customer?

### **Cost of compliance**

Compliance costs small business more per employee than big business. In 2004, according to a report released by the U.S. Small Business Administration's Office of Advocacy, small businesses spent \$2,365 more per employee last year to comply with federal regulations than their larger counterparts. Companies employing fewer than 20 employees spent an average of \$7,647 in 2004 on items ranging from tax and environmental compliance to international trade and workplace requirements. That's 45 percent more per employee than at companies with more than 500 workers. The situation will be similar in Australia.

### **Conclusion**

Small business should be treated as individuals when assessing process, impact and costs of legislation. Regulations and legislation must have different clauses and different processes for small businesses. These regulations and processes must be written so that a small business operator can quickly understand the issues and meet the compliance needs easily and without cost.

Current legislation needs to be reviewed and rewritten to take into account the needs and behaviours of small business operators. More work should be undertaken with individual business associations who truly represent small business, and not larger business, to develop a true assessment of impact on small business. This will require time and effort on behalf of government and probably financial support for the smaller associations but the benefit will come from more efficient small business.

More research needs to be undertaken on small business, its behaviour, its demographics and its needs. This research should be driven by the small business sector, not by government policy makers or academics who have different agendas and different understanding of small business.

NIRA is available to provide extra information as required.

# Attachment A

## Examples of red tape

**This attachment provides examples of information available to small business operators on various compliance demands.**

This information is normally well explained on websites – as best as it can be given the complexity of the legislation.

**Try to read this information with the eyes of a small business operator.**

A small business operator is an individual like the rest of us. He or she probably has a family, a partner, perhaps teenagers, perhaps newly born children, is maybe separated, going through separation, has an unwell parent etc. Large business will provide support to employees in these situations, small business operators will need to support themselves. A small business operator is also trying to manufacture a product or sell a product. They may or may not have staff. They have to maintain a business as well as meet compliance demands from government.

This discussion paper is not saying that legislation should not exist, what we are saying is that legislation and demands should be different for small business operators. As a result the economy will be healthier.

The following information includes examples of

- Records keeping requirements relating to income tax and GST
- Insurance issues
- Federal Privacy Law
- Examples of compliance for a range of Goods and codes of practice
- Company rules
- Superannuation issues

These are samples. There are many, many more examples of compliance needs from other federal government departments such as the Department of Employment, Education and Workplace Relations (DEEWR), ASIC, Centrelink, and Customs to name a few, covering such issues as apprenticeship, training, employment contracts, employment services, OH&S, Workplace safety, statistical reporting, employee information, import and export regulations and so forth.

State government and local governments also have their own demands placed on small business.

## **Taxation**

### **Records keeping requirements relating to income tax and GST**

#### **Sales records**

- sales invoices (including tax invoices)
- sales vouchers or receipts
- cash register tapes, credit card statements
- bank deposit books and account statements

#### **Purchase/expense records**

- purchase/expense invoices (including tax invoices)
- purchase/expense receipts (which include an ABN)
- cheque butts and bank account statements
- credit card statements
- records showing how you calculated any private use component

#### **Year-end income tax records**

- motor vehicle expenses
- debtors and creditors lists
- stocktake sheets
- depreciation schedules
- capital gains tax records

#### **Records relating to payments to employees**

- tax file number declarations and withholding declarations
- worker payment records
- PAYG payment summaries
- annual reports
- superannuation records
- records of any fringe benefits provided

#### **PAYG withholding records relating to business payments**

- records of amounts withheld from payments where no ABN was quoted
- a copy of any PAYG withholding voluntary agreements
- records of voluntary agreement payments
- PAYG payment summaries
- annual reports

#### **Further information is needed for:**

- Capital gains tax
- Consolidation
- Demergers

- General value shifting regime
- Integrity measures
- International financial reporting standards
- Non-assessable non-exempt income
- Non resident income
- Shares, dividends and investments
- Taxation of financial arrangements

**Further questions are asked such as:**

- Do you have income from international transactions?
- Do you have dealings with a related party or interests in a foreign entity?
- Have you made a capital gain on the disposal of an overseas asset?

Information is provided to assist small business operators develop answers (but when are they supposed to actually do their business?)

**Do you have foreign business income?**

To determine the tax treatment of income from international transactions, you must first determine the source of the income. This may depend on whether the transaction involves a country that has a tax treaty with Australia. Currently, Australia has tax treaties with more than 40 countries including all our major trade and investment partners.

**Income from goods or services sold**

**Income tax treatment**

Treaty country - Generally Australian source unless business is carried on through a permanent establishment in the treaty country.

Non-treaty country - For exports of goods and information/know how the source is generally the place of contract.

For exports of services, the source is generally the place where the services are performed although it may be the place of contract.

**Doing business overseas ? overview**

As Australian residents are taxed on their worldwide income, they must report all foreign income in their Australian income tax return.

This overview explains how income from foreign business activities is treated.

Do you have income from international transactions?

You need to determine whether income from international transactions is foreign or Australian source income.

Foreign source income is reported differently to Australian income.

Do you have dealings with a related party or interests in a foreign entity?

You may have special obligations.

Have you made a capital gain on the disposal of an overseas asset?

You may need to report it and pay capital gains tax.

Do you have foreign business income?

To determine the tax treatment of income from international transactions, you must first determine the source of the income. This may depend on whether the transaction involves a country that has a tax treaty with Australia. Currently, Australia has tax

treaties with more than 40 countries including all our major trade and investment partners.

A **permanent establishment** is a fixed place of business through which the business of an enterprise is wholly or partly carried on. It includes a sales outlet, a branch, place of management, a factory, a workshop, an office or a dependent agent (who has authority to enter into contracts on behalf of the enterprise and habitually exercises that authority). Generally, having a website that is hosted by an independent internet service provider in another country is not regarded as having a permanent establishment in that country.

If you operate a **subsidiary** in another country, different arrangements may apply. A subsidiary incorporated overseas is treated as a foreign resident for the purposes of Australian tax law. Generally, a foreign-resident subsidiary will not be treated as constituting a permanent establishment of its Australian parent company.

GST and permanent establishment

A supply of anything other than goods or real property, such as services, is connected with Australia for goods and services tax (GST) purposes if either the thing is done in Australia, or the supplier makes the supply through an enterprise (i.e. a permanent establishment) that the supplier carries on in Australia. A service is typically done where the service is performed. If the service is performed in Australia, the supply of that service is connected with Australia.

Reporting income from international transactions

For **income tax** purposes:

If the income has an Australian source, you treat it the same way as any other domestic income.

If the income has a foreign source, you must also declare it but it is treated differently to Australian source income.

If you have **assessable** (taxable) income from overseas, you must declare it even if tax was taken out in the country from which the income came. If foreign income is taxable in Australia and you paid foreign tax on it, you may be entitled to a foreign tax credit. Taxes for which credit is allowed are called creditable taxes. Read *How to claim a foreign tax credit*.

You must also report foreign income that is exempt from Australian tax, as it may be taken into account to work out the amount of tax you have to pay on your assessable income both Australian and foreign.

Note that you can't offset any expenses or losses in relation to foreign income against any Australian source income. Foreign losses are quarantined but may be offset against foreign income of the same class in later income years.

However, you can choose to use all or some of your Australian tax losses of earlier income years to reduce your net foreign source income. *For further information read Foreign source income – Australian tax losses of earlier income years.*

Before you calculate your net income in each category, all foreign income, deductions and foreign tax paid must be converted to Australian dollars. Read *Converting foreign income to Australian dollars*.

### **Exempt business income**

Certain types of foreign business income are exempt from Australian tax, include:

- foreign branch profits and gains in an exemption-listed country that are subject to tax in that country, and
- dividend income received from a non-portfolio investment in a listed or unlisted country.

### **Do you have international dealings with a related party or interests in an overseas entity?**

Schedule 25A must be included when lodging a company, superannuation, trust or partnership return if a taxpayer has **any** of the following.

International dealings with a related party or parties where the aggregate amount of the transactions or dealings, whether on capital or revenue account, is more than \$1 million (including the value of property/services transferred or the balance outstanding on any loans) – complete section A of Schedule 25A.

An overseas branch or a direct or indirect interest in a foreign trust, controlled foreign entity, transferor trust, foreign investment fund or foreign life policy – complete section B of Schedule 25A.

For more information refer to Schedule 25A.

For more information on related party international dealings and transfer pricing, read International transfer pricing – introduction to concepts and risk assessment.

Limits to debt deductions for thinly capitalised entities

Special rules limiting debt deductions apply to both foreign investments in Australia and Australian investments overseas where a thinly capitalised (or highly geared) entity is involved. A thinly capitalised entity is one whose assets are funded by a high level of debt and relatively little equity.

For detailed information read Thin capitalisation: overview.

### **Goods and Services Tax (GST)**

GST is a broad-based tax of 10% on most goods, including importations, services and other items connected with Australia.

*What is a supply connected with Australia?*

A supply of goods is connected with Australia if the goods are:  
delivered or made available in Australia to the purchaser  
removed from Australia, or

brought to Australia, provided the supplier either imports the goods into Australia or installs or assembles the goods in Australia.

A supply of real property is connected with Australia if the property is in Australia. For GST purposes, real property includes land, land and buildings, and rights over land.

A supply of something other than goods or real property is connected with Australia if:

the thing is done in Australia, or

the supplier makes the supply through a business they carry on in Australia.

*For more information, refer to supplies connected with Australia.*

### **GST treatment of exports**

Exports are generally GST-free. These generally include:

goods physically exported from Australia, and services supplied to a non-resident outside Australia.

For more information about the GST treatment of exports, refer to Exporting goods or services overseas.

For more information about GST and an explanation of terms, refer to GST for small business (Nat 3014).

### **Capital gains on overseas assets**

For Australian residents, capital gains on overseas assets are treated in the same way as capital gains on Australian property. If the gain is taxable in Australia and you have paid foreign tax on it, you may be entitled to a foreign tax credit.

From 1 April 2004, certain capital gains and capital losses made by Australian companies on the disposal of their shares in foreign companies with underlying active businesses are disregarded or reduced. The attributable income of a controlled foreign company (CFC) arising from certain CGT events happening to shares owned by a CFC in a foreign company will also be reduced.

More information

### **Fringe benefit tax (FBT)**

Declarations - About declarations

You must also obtain all employee declarations no later than the day on which your FBT return is due to be lodged with the Tax Office or, if you do not have to lodge a return, by 21 May.

The declarations are listed below.

- Airline transport benefit declaration
- Employee's car declaration
- Employment interview or selection test declaration – transport in employee's car
- Expense payment benefit declaration
- Fuel expenses declaration
- Living away from home declaration
- Loan fringe benefit declaration
- No private use – expense payments declaration
- No private use – residual benefits declaration
- Declaration of car travel to work-related medical examination, medical screening, preventative health care, counselling or migrant language training
- Property benefit declaration
- Recurring expense payment fringe benefit declaration
- Recurring property fringe benefit declaration
- Recurring residual fringe benefit declaration
- Relocation transport declaration
- Remote area holiday transport declaration
- Residual benefit declaration
- Residual benefit declaration – vehicles other than cars
- Temporary accommodation declaration

**Advanced topics** can be accessed by the small business owner

- Reportable fringe benefits
- Salary sacrifice

- Calculators
  - Forms & services
  - Publications
  - Fact sheets
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## **Insurance**

High levels of taxation on insurance inevitably results in State government's being reliant on insurance taxes to fund State services. This means that efforts to relieve the burden of taxation on insurance become inevitably tangled with discussions on the capacity of the States to fund core services (such as health, education and law and order) or the trade-off between taxes on insurance and cuts to government spending.

### **The Insurance Tax System**

The insurance sector is subjected to a wide range of taxes and levies. They are:

#### Taxes on Income

- Company Tax, where insurance companies pay a direct tax of 30%.
- Income Tax

#### Taxes on Employers

- State Payroll taxes

#### Taxes on Good & Services

- Fire Service Levies (FSL) – which are applied to a range of insurance products and are levied for the purposes of funding fire brigade services in the jurisdictions of NSW, Victoria and Tasmania.
- Goods & Services Tax (GST) - the economy wide indirect tax levied at a rate of 10% to final customers.
- Stamp Duties – which are applied to the insurance contract with varying rates across the States and territories.

The State of NSW also subjects insurers to the Insurance Protection Tax (IPT). The Insurance Protection Tax was introduced post the HIH Royal Commission to protect policy holders from insurer collapse and to fund State government debt arising from the collapse of HIH insurance. Unlike other State taxes, however, the IPT is not able to be passed onto policy holders and accordingly, is a direct tax on insurer shareholder capital. This tax serves to penalise small retail “mum and dad” investors and acts as a disincentive to investors in the insurance industry. In 2006/07, the NSW government is forecast to collect \$69 million from the IPT.

The interaction and overlap of the indirect taxes on general insurance gives rise to punitive tax on tax effects. For example, in NSW and Victoria, a purchaser of insurance cover is subject to three layers of tax that accumulate on one another in this fashion.

- The Basic Insurance Premia which forms the base for the Fire Services Levy (FSL)
- The Basic Insurance Premia, together with the FSL forms the tax base for the GST.

- The Basic Insurance Premia, the FSL, and the GST forms the base for the levy of stamp duty.

This tax on tax effect adds a significant impost to consumers as outlined overleaf.

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## Federal Privacy Law

This page consolidates the legislation, regulations, codes, determinations and guidelines which affect private sector business, health service providers and Commonwealth and ACT government agencies.

The Federal Privacy Act contains *eleven* Information Privacy Principles (IPPs) which apply to Commonwealth and ACT government agencies. It also has ten National Privacy Principles (NPPs) which apply to parts of the private sector and all health service providers. Part IIIA of the Privacy Act regulates credit providers and credit reporting agencies. The Privacy Commissioner also has some regulatory functions under other enactments, including the *Telecommunications Act 1997 (Cth)*, *National Health Act 1953 (Cth)*, *Data Matching Program (Assistance and Tax) Act 1990 (Cth)* and the *Crimes Act 1914 (Cth)*.

- Private Sector Business
- Health Service Providers
- Commonwealth and ACT Government Agencies

**(Please note:** Some States in Australia have also enacted privacy legislation. For information on these privacy regimes please visit our [State Privacy Laws](#).)

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### Private Sector Business

From 21 December 2001 the private sector amendments to the *Privacy Act 1988 (Cth)* (the "Act") became operative. The new provisions provide for ten National Privacy Principles (NPPs), found in Schedule 3 of the Act, which apply to the private sector.

The NPPs are in addition to existing legislation and guidelines which affect parts of the private sector. Part IIIA of the Act applies to credit providers and credit reporting agencies. The Credit Reporting Code of Conduct is also binding law on credit providers and credit reporting agencies. This Code was issued by the Privacy Commissioner (the "Commissioner") under section 18A of the Act in 1991 and is complementary to Part IIIA of the Act. inviolate

The Commissioner has also issued credit reporting determinations which have the force of law.

Three other significant areas which are monitored by the Commissioner which affect parts of the private sector are in relation to:

- the collection, storage, use and security of personal tax file numbers by organisations that are authorised or approved to record such information under taxation, assistance agency or superannuation law; and
  - the disclosure of personal information to law enforcement agencies under Part 13, Division 5 of the Telecommunications Act 1997 (Cth).
  - the handling of personal information under the Anti-Money Laundering and Counter-Terrorism Legislation. Under s6E (1A) of the Privacy Act 1988 (Cth) certain activities of some small businesses previously exempted are brought within coverage of the Act.
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## **Examples of compliance for a range of Goods and codes of practice**

National Standard for the Storage and Handling of Workplace Dangerous Goods [NOHSC:1015(2001)] (PDF)

National Model Regulation for the Control of Workplace Hazardous Substances (PDF 501kB)

Guidance Note for the Control of Workplace Hazardous Substances in the Retail Sector [NOHSC:3018(1994)] (PDF 580kB)

Workplace Injury and Disease Recording Standard in the Workplace (PDF 193kB)

### **Amenities - Construction Industry**

ACT Construction Industry Amenities Code of Practice (*Commenced 28 August 1998*)

### **Cash in Transit**

Code of Practice for the Transport and Delivery of Cash (*Commenced 19 August 2003*)

### **Demolition**

Safe Demolition Work Code of Practice (3rd Revised Edition) (*Current edition commenced 23 November 2000*)

### **First Aid**

ACT First Aid in the Workplace Code of Practice (2nd Revised Edition) (*Current edition commenced 1 July 2006*)

### **Manual Handling**

ACT Manual Handling Code of Practice (Revised Edition) (*Current Edition commenced February 1999*)

## **Sex Industry**

ACT Sexual Services Industry Code of Practice (*Current edition commenced 17 May 2005*)

## **Steel Construction**

Code of Practice for Steel Construction (*Commenced 26 March 1997*)

## **Working on Roofs**

Safe Working on Roofs Part 1 - ACT Code of Practice (*Commenced 5 December 1997*)

## **Working on Roofs**

Safe Working on Roofs Part 2 - ACT Code of Practice (*Commenced 28 July 1999*)

The following are available from the Office of the Australian Compensation Council or Australian Government Publications.

## **Confined Spaces**

Safe Working in a Confined Space AS2865-1995/ [NOHSC:1009(1994)] (*Commenced 24 April 1995*)

## **Hazardous Substances**

Exposure Standards for Atmospheric Contaminants in the Occupational Environment [NOHSC:1003(1995)] (*with the exception of chrysotile @ 0.1 fibre/mL*) (*Commenced 5 November 1996*)  
{Refer also to the following database Hazardous Substances Information System (HSIS) for access to additional information}

## **Human Immuno-deficiency Virus and Hepatitis B**

National Code of Practice for Health Care Workers and Other People at Risk of the Transmission of Human Immuno-deficiency Virus and Hepatitis B in the Workplace (HIV & Hep B) [NOHSC:2010(1993)] (*Commenced 22 June 1994*)

## **Inorganic Lead**

National Standard for the Control of Inorganic Lead at Work [NOHSC:1012(1994)] and Code of Practice for the Control and Safe Use of Inorganic Lead at Work [NOHSC:2015(1994)] (*Commenced 12 January 1995*)

## **Ionising Radiation**

National Standard for limiting occupational exposure to ionising radiation [NOHSC:1013(1995)] (*Commenced 3 January 1996*)

## **Noise and Hearing Protection**

National Standard for Occupational Noise [NOHSC:1007 (2000)] and National Code of Practice for Noise Management and Protection of Hearing at Work [NOHSC:2009(2004)] (*Commenced 17 August 2004 replacing earlier editions which commenced 14 January 1994*)

## **Occupational Overuse Syndrome**

National Code of Practice for the Prevention of Occupational Overuse Syndrome [NOHSC:2013(1994)] (*Commenced 28 June 1994*)

## **Plant**

National Standard for Plant [NOHSC:1010(1994)] (*Commenced 12 January 1995*)

## **Synthetic Mineral Fibres**

National Standard for Synthetic Mineral Fibres [NOHSC:1004(1990)] and National Code of Practice for the Safe use of Synthetic Mineral Fibres [NOHSC:2006 (1990)] (*Commenced 19 February 1992*)

See also the following Codes of Practice for the ACT that have been adopted under the Dangerous Substances Act 2004.

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## **Company rules** (copied from the ASIC website)

### **Display your company name**

A company must display its name prominently at every place at which the company carries on business that is open to the public. A public company must also display its name and the words "registered office" prominently at its registered office.

### **Use your Australian Company Number correctly**

When we register a company we give it a number known as the Australian Company Number (ACN).

The company name, in legible characters, followed by the expression 'Australian Company Number' (or a permitted abbreviation - list shown below) and the number itself must appear on:

- the common seal (if any) and every other seal of the company (if any)
- every public document issued, signed or published by, or on behalf of, the company

- every eligible negotiable instrument issued, signed or published by, or on behalf of, the company, and
- all documents required to be lodged with ASIC under the Act.

This is required under s123 and s153 of the Act.

The abbreviations set out below may be used:

- instead of words that the Act requires to be part of a company's name or to be included in a document or on the company's common seal (if any), and
- instead of words that are part of a company's name, and
- with or without full stops.

Permitted abbreviations are:

- for Proprietary '**Pty**'
- for Limited '**Ltd**'
- for No Liability '**NL**'
- for Australian '**Aust**'
- for Company '**Co**' or '**Coy**'
- for Number '**No**'
- for and '**&**'
- for Australian Company Number '**ACN**' or '**A.C.N.**'

### **Use your ABN correctly**

You can now use your Australian Business Number (ABN) with your company's name, on company documents and negotiable instruments, provided that:

- your ABN includes your nine digit ACN, and
- the quotation of the ABN is effected in the same manner in which quotation of the ACN would normally occur. (For example, a company is required to place its ACN with its name on the first page where that name appears in a document).

### **Legal obligations of company officeholders**

Make sure that company officeholders know what their legal obligations are.

As a director, you must:

- be honest and careful in your dealings at all times
- know what your company is doing
- take extra care if your company is operating a business because you may be handling other people's money
- make sure that your company can pay its debts on time
- see that your company keeps proper financial records
- act in the company's best interests, even if this may not be in your own interests, and even though you may have set up the company just for personal or taxation reasons, and

- use any information you get through your position properly and in the best interests of the company. Using that information to gain, directly or indirectly, an advantage for yourself or for any other person, or to harm the company may be a crime or may expose you to other claims. This information need not be confidential; if you use it the wrong way and dishonestly, it may still be a crime.

If you have personal interests that might conflict with your duty as a director, you must generally disclose these at a directors' meeting. This rule does not apply if you are the only director of a proprietary company.

### **What work must a director do?**

You and any other directors will control the company's business. Your company's constitution (if any) or rules may set out the directors' powers and functions.

You must be fully up-to-date on what your company is doing:

- Find out and assess for yourself how any proposed action will affect your company's business performance, especially if it involves a lot of the company's money.
- Get outside professional advice when you need more details to make an informed decision.
- Question managers and staff about how the business is going.
- Take an active part in directors' meetings.

Only be a company director or a company secretary if you are willing, able and have enough time to put in the effort.

Avoid any company where someone offers to make you a director or secretary on the promise that 'you won't have to do anything' and 'just sign here'. You could be exposing yourself to many legal liabilities.

As a director, the law makes you personally responsible for keeping proper company records.

You must see that the company keeps up-to-date financial records that:

- correctly record and explain its transactions (including any transactions as a trustee), and
- explain the company's financial position and performance.
- All companies must have financial records so that:
- true and fair financial statements of the company can be prepared if needed
- financial statements can be conveniently and properly audited if necessary, and
- the company can obey the tax laws.

If your company is a 'small proprietary company' (as defined in the Corporations Act 2001) it will generally not have to prepare formal financial reports under the Corporations Act each year and lodge them with ASIC. However, you must still keep financial records, and may need financial reports for managing and monitoring your

company's financial position and performance for tax purposes or for raising finance.

Large proprietary companies and public companies - even non-profit public companies - must prepare financial reports, have them audited and lodge them with ASIC.

### **What are financial records?**

Below are some of the basic financial records that the law may require a company to keep:

- general ledger, recording all the company's transactions and balances (revenues, expenses, assets, liabilities etc.) or summarising transactions and balances detailed in other records
- cash records - e.g. bank statements, deposit books, cheque butts, petty cash records
- debtor and sales records - e.g. a list of debtors and their balances, delivery dockets, invoices and statements issued, a list of all sales transactions
- creditor and purchases records - e.g. purchase orders, invoices and statements received and paid, unpaid invoices, a list of all purchases, a list of all creditors and their balances
- wages and superannuation records
- a register of property, plant and equipment showing transactions and balances in relation to individual items
- inventory records
- investment records, e.g. contract notes, dividend or interest notices, certificates
- tax returns and calculations, e.g. income tax, group tax, fringe benefits tax and GST returns and statements
- deeds, contracts and agreements.

A company would also normally prepare the following statements regularly (say, monthly) to manage its business performance and provide to lenders, etc:

- Statement of Financial Performance - a statement showing the company's revenues and expenses and the profit or loss that results from these items
- Statement of Financial Position - a statement showing the things of value the company owns and the debts the company owes, and
- Statement of Cash Flows - a statement summarising cash inflows and outflows.

Get professional advice if you have any doubt about the content or type of financial records to keep. The lists above give examples only, because the financial records you need will vary from company to company.

You may keep some financial records electronically, but you must be able to convert them into hard copy so that you can give them to anyone entitled to inspect them. Make backup copies of electronic records regularly, for example weekly or daily.

### **What if your company can't pay its debts?**

You must ensure that your company is able to pay all of its debts as and when they

become due for payment. A company is 'insolvent' if it cannot pay all of its debts as they become due and payable.

By law, you must prevent your company from incurring a debt when it is insolvent or about to become so. This means you must consider whether you have reasonable grounds to believe that the company will be able to pay a new debt when it becomes due, as well as pay all the other debts.

You may expose yourself to criminal prosecution, substantial fines or to action by a liquidator, creditors of the company or ASIC to recover amounts lost by creditors due to your actions. Your personal assets - not just your company's - may be at risk.

Common signs of financial trouble are:

- low operating profits or cash flow from the main business
- problems paying trade suppliers and other creditors on time
- trade suppliers refusing to extend further credit to the company
- problems with meeting loan repayments on time or difficulty in keeping within overdraft limits
- legal action taken, or threatened, by trade suppliers or other creditors over money owed to them.

If your company is in financial difficulty or in danger of being insolvent, seek immediate advice from an insolvency professional. They will be able to explain your options to you. Your options may include re-structuring your company's affairs, changing your company's activities or appointing a voluntary administrator or liquidator to the company.

Do not assume that you will be able to trade out of the problem. Delay could be damaging to the company and to you personally, and may reduce the options available.

### **What happens to dishonest directors?**

Every year, the courts send dishonest and reckless company officers to prison, and impose heavy fines and award damages.

As the company watchdog, we investigate corporate crime. You can report dishonest company directors to us. We may take a number of steps against directors who fail in their duties.

### **What can you find out about other companies?**

See our information sheet 'Don't get burned' for tips on avoiding shonky operators and fly-by-night companies.

You can find out more about a company you are dealing with by checking its identity to make sure that it really exists. You can also see if it is up-to-date with its fees and documents.

Tell us if you think another company is trading while it can't pay its debts. We may not be able to investigate everything, but we do keep detailed records of all complaints and may take action if we have evidence of serious wrongdoing. Tell us if

you think that a company director is acting dishonestly.

### **Company housekeeping - records, registers etc.**

All company officers must make sure that the company attends to some basic 'housekeeping' matters. The directors remain ultimately responsible for the company's compliance with the Corporations Act.

When a company is set up, you must:

- register your company name with ASIC and obtain an Australian Company Number (ACN)
- have a registered office. (If your company doesn't occupy the same address as the registered office, then you must have written consent from the person who occupies the registered office.)

Make sure that you:

- display the company name at every place at which your company carries on business and that is open to the public. Also, a public company must display its name and the words 'registered office' prominently at its registered office.
- display the company name, the words 'Australian Company Number' (or 'ACN') or 'Australian Business Number' (or 'ABN') and the relevant number on:
  - the common seal (if the company has one)
  - every public document of the company
  - every negotiable instrument (e.g. cheque, promissory note etc.) of the company, and
  - all documents lodged with ASIC.

Your company must keep:

- registers of members (shareholders)
- registers of option holders (if you have them)
- minutes of general meetings
- minutes of meetings of directors
- registers of charges created by the company over company property, and
- financial records that enable an assessment of the company's financial position and performance and are sufficient for financial statements to be prepared (and audited if necessary) for at least seven years after the transactions are completed.

For more about the ASIC forms your company must lodge, see our information sheet 'Checklist for registered companies and their officers'.

### **What do you have to tell us about your company?**

Each year you must:

#### **Pay your company's annual review fee**

We will send an annual statement of company details to your company or your registered agent within two weeks of your company's annual review date. This date

will usually coincide with the anniversary of your company's registration. The statement may be sent electronically, where arrangements have been made with us to do so.

The statement of company details sets out the company's details recorded in ASIC's database, such as the names and addresses of its directors and secretary, registered office, principal place of business, ultimate holding company (if any), shareholders and share details. If these details are correct and no other changes have occurred that require you to notify ASIC, then the director(s) need only pass a solvency resolution within 2 months of the review date and pay the annual review fee invoice that accompanies the statement.

If any details on the statement are no longer correct, you must update them using Form 484 Change to company details. You have 28 days from the statement's issue date to lodge the form.

We may also require information to be lodged, eg where we notice that data is missing.

To avoid the payment of late fees or other non-compliance action you must:

- pay the annual review fee within two months of the review date
- lodge Form 484 to update your company's details if they change during the year, within 28 days of the change, and
- lodge Form 484 (if required) to update your company's details, within 28 days of your company statement's issue date.

For more, see our information sheet, Annual statements and late fees.

### **Pass a solvency resolution**

The company's directors must pass a solvency resolution within 2 months after the company's review date, unless the company has lodged a financial report with ASIC within the 12 months before the review date.

A **positive** solvency resolution means that the directors think that there are reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable. You don't have to lodge notification of a positive solvency resolution with ASIC, but you must pay the company's annual review fee. Payment of the fee is taken to be a representation by the directors that the company is solvent.

A **negative** solvency resolution means that the directors think that there are not reasonable grounds to believe that the company will be able to pay its debts as and when they become due and payable. If the directors pass a negative solvency resolution ASIC must be notified using **Form 485 Statement in relation to company solvency** within 7 days after the resolution has passed.

If the directors don't pass a solvency resolution within 2 months of the company's review date, ASIC must be notified using Form 485 within 7 days after the end of the 2-month period following the review date.

### **Keep us informed of various changes in your company's details**

Some of the more common things you must tell us are set out in the following table. The Corporations Act requires you to tell us about these changes within a certain time period. If you tell us after this time, you may have to pay a late fee.

Send the correct form and Fee to:

**Australian Securities & Investments Commission (ASIC)**

**PO Box 4000**

**Gippsland Mail Centre VIC 3841**

You can also use our internet lodgement service to update company records.

## **Keeping ASIC informed of activity or duty**

### **Form**

If you want to keep registers of shares, options or charges at an address other than the company's registered office or principal place of business, you must tell us where they are being kept within 7 days after the change.

909

If the officers of the company change, or if any personal details change, such as their residential address, you must tell us within 28 days after the change. You must also lodge the terms of appointment when appointing an alternate director.

484

A director or secretary can tell us directly if they retire or resign. A copy of their letter of retirement or resignation from the company must be sent with the form.

370

If you change the company's registered office or principal place of business, you must tell us within 28 days after the change.

484

If you create a charge on company property, you must tell us within 45 days.

309 & 350

If you vary a charge over the company's property, you must tell us within 45 days from the date of the variation.

311

You don't have to notify us when a charge is satisfied, but it may be in your interest to do so.

312

If the company changes its name, you must tell us within 14 days after the resolution was passed. (New names are subject to availability criteria.)

205

If you issue new shares, you must tell us within 28 days from the date of issue.

484

Proprietary companies must advise us within 28 days of changes to the top 20 members in each class of share held. Such changes include changes of name and address, increase or decrease in shares held and cessation of membership.

484

Proprietary companies must advise us within 28 days of changes to their ultimate holding company.

484

If you divide or convert shares into different classes, you must tell us within 14 days from the date of the change.

211

You must notify us of a negative solvency resolution within 7 days of the resolution.

485

If no solvency resolution is passed within 2 months of the review date you must notify us within 7 days after that period

485

You may apply to change your company's review date if it is considered unsuitable. You must, however, be able to satisfy certain conditions to have the review date varied.

### **A final word and to find out more**

Finally, you are unlikely to get into trouble if you:

- are honest and careful in dealing with the company and on its behalf with others
- understand your legal obligations and make compliance with them part of your business
- keep informed about your company's financial position and performance
- get professional advice or more information when you are in doubt, and
- give the interests of the company, its shareholders and its creditors top priority.

This is general information about the law and how we interpret it. You must decide whether what we say applies to you at your own risk. In most cases you'll need a qualified professional adviser to take your particular circumstances into account and tell you how the law applies to you.

### **Meetings**

#### **How is a meeting of members called?**

Company directors have the power to call meetings of all members or meetings of only those members who hold a particular class of share (a company may have different classes of shares to which different rights and restrictions are attached).

Members who hold at least 5% of the votes which may be cast at a general meeting of the company, have the power to call and hold a meeting themselves, or to require the directors to call and hold a meeting.

Meetings may be held regularly or to resolve specific questions about the management or business of the company. The process to be followed in calling meetings, conducting meetings, and voting at meetings is defined in Part 2G.2 of the Corporations Act 2001.

A proprietary company can pass a resolution without a physical meeting being held, if all members entitled to vote on the resolution sign a document stating that they are in favour of the resolution. This does not apply to a resolution to remove a company auditor.

#### **What is a quorum?**

A quorum is the minimum number of members of a group required to be present to transact business legally. For a meeting of company members, at least two members

must be present for the full meeting.

### **Voting at a meeting**

An ordinary resolution must be passed by a majority of the votes cast by members of the company entitled to vote on the resolution at the meeting in person or by proxy (if proxies are allowed).

A special resolution must be passed by at least 75% of the votes cast by members of the company entitled to vote on the resolution and who vote at the meeting in person or by proxy (if proxies are allowed).

Different rights to vote at meetings of members may attach to different classes of shares. Unless specified by the company's constitution and subject to those different rights, each member has one vote on a show of hands and, on a poll, one vote for each share held.

The sole member of a company may pass a resolution by recording and signing their decision.

A company must keep a written record (minutes) of the members' resolutions and meetings. Members are entitled to inspect the minute books of a company free of charge at the company's registered office address or principal place of business, however, if a member requests a copy of the minutes of a resolution or meeting, the company may charge the prescribed amount.

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## **Superannuation**

(copied from the ATO website)

- [When a new employee starts](#) – provides information on your superannuation obligations– how, when, where and how much
- [During employment](#) – provides information on the use of tax file numbers, superannuation obligations and superannuation deduction limits
- [When an employee leaves](#) – introduces the concept of eligible termination payments (ETPs), describes the various types of payments (for example, redundancy payments and death benefits) and explains your obligations
- [Glossary](#) – links to a brief description of some common terms used on this site, and
- [More information](#) – provides links to a range of sources of more detailed information.

### **When a new employee starts**

As an employer, you have superannuation obligations to your new employees.

The publication *[Superannuation guarantee – a guide for employers](#)* is our most comprehensive guide to the superannuation guarantee, and will help you understand your superannuation guarantee obligations.

The guide provides you with information when you employ a new staff member such as:

- Determining who is an employee and if they are eligible for the superannuation guarantee
- Explaining when to pay contributions and how much to pay
- Determining an employee's earnings base
- Checking whether a superannuation fund complies
- Working out who is eligible for choice of superannuation fund and which superannuation fund to use
- Understanding the superannuation guarantee charge and how to calculate it, and
- Your reporting and record-keeping requirements.

For information on your choice of superannuation fund obligations refer to *Choice of superannuation fund – guide for employers*.

### **During employment**

Once you have staff on board, you will have continuing superannuation obligations under the superannuation guarantee legislation (see When a new employee starts for information about who is covered and what you need to do). This includes:

- Paying enough superannuation contributions for your employees on a quarterly basis. If you fail to meet your obligations under superannuation guarantee legislation, you will be liable for the superannuation guarantee charge
- Understanding your responsibilities in relation to tax file numbers
- Understanding deduction limits when claiming a deduction for contributions.

### **When an employee leaves**

When a member of your staff leaves your employment, you will generally make some sort of final payment to them. Many of these payments are known as eligible termination payments (ETPs). Depending on what components are included in the payments you make, you will need to take out different amounts of tax.

The tax laws require you to give your employee certain information about the payment you make to them. You may also need to report some of the payments you make to the Tax Office.

When an employee leaves you will need to:

- determine if any part of the payment is an ETP
- calculate the different components of the ETP
- provide the employee with an ETP pre-payment statement – employers payment statement to an employee (NAT 2668) if the gross ETP is more than \$5,000
- pay the ETP in accordance with your employee's instructions

- if paying a cash ETP of more than \$5,000, complete an Employers reasonable benefits limit reporting form (NAT 14346) or lodge the information to us electronically. You may wish to use the accompanying instructions, How to complete an employers reasonable benefits limit (RBL) reporting form (NAT 14348). Send this to the Tax Office by the 14th day of the month after the ETP is paid to the employee.
- If rolling the ETP over into the employee's superannuation fund, give the fund an ETP roll over statement – industry standard for employers (NAT 2659).
- provide a completed ETP payment summary – payer to complete (NAT 2605) to the employee within 14 days of the ETP being paid to the employee
- include the ETP payment summary information to the Tax Office in your PAYG payment summary statement, and
- keep the necessary ETP and RBL records for five years.

An online calculator is available to assist employers with the calculations required