

The SOTHERTONS REPORT



MARCH 2011

Welcome to the first issue of the Report for 2011. Since our December issue Queensland, Victoria and Christchurch have all suffered extensive damage from almost unprecedented natural disasters. The Sotherton's Christchurch office was at the epicentre of the quake and it is with relief we report all staff are alive and as well as can be expected.

This issue covers topics as diverse as the Cooper Review recommendations for Superannuation reform plus a range of superannuation based articles and determinations.

The disastrous floods have resulted in the Federal Government's flood levy and we highlight OH&S issues facing employers in cleaning up after the floods and ongoing potential problems.

The changing landscape in relation to registration of business names around the country is explained on how this will impact on all clients and we highlight the introduction of the National Paid Parental Leave scheme that was effective from 1st January 2011.

Times change and bring differences in approach to a variety of issues. The Australia Taxation Office's tougher stance on clients who do not meet their taxation obligations is a far cry from the approach they have taken over the past few years so clients have been warned.

For those readers who are Blackberry users we pass on some simple but useful tips.

Finally, for those contemplating a business loan it can be difficult for many smaller clients and we provide some basic tips as to how to best achieve success in obtaining funding.

With many more topics covered in this issue, happy reading and next issue we hope to bring an overview of the major aspects of the Gillard Government's Federal budget and how it will affect our clients.

Until next time. ■



ATO warns about Labour Hire Arrangements using a Discretionary Trust

The ATO has issued an alert warning people to be cautious when entering into an arrangement with a firm that includes steps to split their income with an associate, usually their spouse, by using a discretionary trust.

The Tax Commissioner indicated he was concerned that people involved in this arrangement may be unaware of the risk that it may be ineffective under the taxation laws and the superannuation guarantee provisions. He said:

"We are concerned that individuals may enter into these arrangement to reduce tax liabilities by splitting their income with an associate and that the arrangement may not satisfy the personal services income tests and that the anti-avoidance provisions could possibly apply."

"The ATO is reviewing these arrangements and will be writing to entities advising them about our concerns that they may risk contravening the promoter penalty laws."

Firms entering into such arrangements will be warned that they may not be withholding the appropriate amount of tax and providing the correct superannuation support to the individual participants and may be liable for penalties and charges under the Taxation and Superannuation Guarantee Acts. ■

TPA to CAA and a Bit More

Effective 1 January 2011, the Trade Practices Act 1974 (TPA) was renamed the Competition and Consumer Act 2010 (CCA).

The CCA introduced substantial changes to consumer law, including expanding the unfair practice provisions, creating a new national product safety regime, and introducing new laws on consumer guarantees. It is designed to create a unified national consumer law (the Australian Consumer Law or ACL) to apply to consumer transactions in all Australian jurisdictions.

The changes can potentially impact on the enforceability of consumer contracts and other documents. Documents that will need to be reviewed include leases, mortgages, goods and services contracts, supply contracts (including standard form terms and conditions of supply), commercial contracts and other transactional documents that typically refer to the TPA. If your business involves sales to consumers (as opposed to sales to other businesses), the new Act may necessitate substantial modification to sale documents.

For more information on the operation of the CCA and possible business implications, or to arrange for a review of your business-consumer documents we ask that you contact your corporate lawyer or alternatively should you require further assistance please contact your business services advisor who will be happy to assist you. ■



Tougher Client Money Standard for Accountants – APES 310



Accountants and auditors who undertake transactions on behalf of clients will be subject to stricter requirements after the Accounting Professional and Ethical Standards Board (APESB) issued a new standard. **APES 310 'Dealing with Client Monies'** broadens accountants' obligations involving client monies, and extends annual requirements to client bank accounts to ensure strengthened safeguards for clients. APES 310 will be effective from 1st July 2011.

Clients place so much trust in accountants who engage in transactions on their behalf, APESB Chairman Kate Spargo has stated it is vital these transactions are conducted with reference to the highest professional and ethical standards.

"The new standard is very much in the public interest and will foster greater client trust in accountants who manage their transactions". "The clarity of the standard has also been improved with the separation of professional obligations of accountants dealing with client monies from auditor's obligations," said Ms Spargo.

Replacing the existing standard APS 10 'Trust Accounts' and its guidance note GN 3 'Operation of Trust Accounts', the new standard includes a revised audit opinion in line with the 'Clarity' auditing standards as well as:

- An extension of audit requirements to include client bank accounts as well as Trust Accounts;
 - A broadened definition of client monies to include monies where the accountant and personnel have no present entitlement to such monies;
 - A new definition of "personnel" which extends beyond personnel in a Member's practice to also capture contractors or agents as some of these arrangements may be outsourced;
- and
- Specific clauses relating to anti-money laundering and illegal activities.

*Both articles by and reprinted with permission of:
Colin Parker, B.Bus FCA MAICD,
Principal, GAAP Consulting. ■*

Whether a Property Constitutes Residential Premises for GST Purposes



Under the GST Act, a sale of real property is "input taxed" (ie no GST is payable on the sale), if the property is "**residential premises to be used predominately for residential accommodation**", and other requirements are met. Although the phrase from the GST Act appears straightforward, it has been subject to lengthy arguments before the courts.

In the most recent case, the Full Federal Court held that whether a property was residential premises to be used predominately for residential accommodation, and therefore input taxed, was to be determined objectively by reference to the physical characteristics of the property as at the date of acquisition.



***Are you planning on selling a residential property?
GST should be part of any tax planning considerations.
Please contact our office for further advice. ■***

The Changing Landscape In Relation To Business Names

Pre July 2011 clients should be aware that all trading businesses operating within Australia were required to register their business names in each state or territory where business was to be carried out, where business are not trading under the name of an individual, partner/s name/s or if they are operating as a company and trading under the company name.

Under the new regime, which is to take effect from July 2011, all states and territories have referred their powers to the Federal Government. All applications, registrations and renewal of business names will be governed under a National Register which will be both managed and administered by the Australian Securities and Investments Commission (ASIC).

Below we have summarised changes that clients need to be aware of:

- There will no longer be a need to register separately in each state or territory. One application and one payment will be made, giving recognition in all states and territories. Fees for registration drop to \$30 for 1 year and \$70 for 3 years and renewal fees will decrease in all states and territories except in the Northern Territory which will see a small increase.

Under the National Register, new businesses must hold an ABN to apply for a business name and will be able to register for an ABN and a national business name under a single integrated online system. There will still, however, be the option to comply with these requirements through a paper based system.

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- As the online registration of a business name will be instantaneous, those businesses that do not have an ABN will still be allowed to apply for a name, during which time the name will be "pending". During this time the name will not be able to be registered by anyone else. Upon approval and payment for the business name and approval of the ABN, the name will be registered in the National Register. If the payment for the business name is not received within seven days, or if the allocation of an ABN is not received within 28 days, the name will become available to other businesses.
- Current business names under state and territory based regulation will automatically be transferred to the National Register. If these business owners do not have an ABN they will not be obliged to get one on transfer to the National Register. An ABN will also not be required for the renewal of these pre-existing business names under the National Register. However, these business owners, whilst registered under the new system, will be unable to register for an AUSKey, which is the new online security credential allowing access to government online services.
- A free government search register will be provided by ASIC, showing the business contact details, address and ownership of any business that has a registered business name (home-based registered businesses will only have their suburb listed on the free online register). Detailed extracts on all businesses listed on the register will be accessible through ASIC for a fee unless businesses have requested to have their details suppressed.

Be aware that not all Business names will be registered, if for example:

1. The name is identical, or nearly identical, to an already existing registered company or a business name or a name on the National Register;
2. The name suggests a connection with the government (unless ministerial approval is obtained);
3. The name is deemed likely to be offensive;
4. The name contains unacceptable characters (e.g. A foreign language character); or
5. The name contains restricted words that require a particular body's approval to be used (e.g. ANZAC).

- Clients need to be aware that under the new regime the registration of a business names that only differs by location, for example "Pete's Garage" and "Pete's Garage Mascot", regardless of whether or not there is a similarity in the goods or services provided, will be allowed.
- The online system will not prevent the registration of protected titles such as doctor or lawyer, or licensed trades, such as electrician. However, applicants must hold the relevant Australian qualifications, memberships or approvals to use their business name.
- As is currently the case, if a franchised business is not trading under its own entity name but the franchise name it will need to register the franchise name. A business that applies for a franchise name will however need to ensure, under its franchise agreement, it has the authority to trade under that name.
- Unsuccessful or rejected applicants will have 28 days to seek a cost free review by ASIC. If the review results in continued rejection of the application the applicant can apply at a cost of \$682 to the Administrative Appeals Tribunal. These fees are refunded if the appeal is successful.
- The transfer of state and territory based business names to the National Register will result in a number of identical business names being listed on this new register. These identical business names will be distinguished on the National Register by a geographical suffix or qualifier, for example (NSW).The business name itself will not include the identifier or suffix.
- We remind clients that the mere registration of a business name does not itself give any proprietary rights in the name. Only registered trademarks give this kind of protection. Under the new online application system there is a streamlined information link to trade mark and domain name searches.

It is still the responsibility of all applicants to seek independent legal advice to ensure that their business name/s do not infringe the intellectual property or other rights of another person in Australia.

Should any client have any queries in relation to any of the points raised above please do not hesitate to contact your business services Director / Partner who will be happy to answer any questions.

Should any client wish to register a business name please contact their business service manager or Director / Partner who will ensure the registration and required ABN applications are attended to. ■

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Further evidence that the ATO is getting tougher

More evidence continues to arise to back up the belief that the ATO are taking a hard line approach to claw back their own lost revenue since the GFC hit their bottom line in 2008 and 2009. SMEs and their owners seem to be their primary target.

The first of these activities centres on "significant revenue losses" reported by a large number of small businesses in 2008 and 2009 which can be used to offset future tax bills. The Tax Office is planning greater scrutiny in this area.

The soft touch adopted during the economic downturn is being replaced with reviews and even audits of loss claims. It is understood warning letters have been sent to many SMEs who reported losses in 2008 and 2009.

The other activity recently adopted by the Tax Office centres around the use of garnishee orders to withdraw funds directly from taxpayers' bank accounts to partly pay outstanding tax debts.

It has been reported in the press that many accounting firms have recently reported that the ATO are not entering into payment arrangements as easily as one or two years ago at the height of the GFC.

Unfortunately the Commissioner of Taxation has taken to contacting clients directly. This process causes a great deal of angst with all clients and can become very confusing for clients when we have or are in the process of making alternative arrangements.

Sothertons strongly recommend that any contact by the ATO is referred back to their Accounting services Director or Partner. Clearly the use of your Sothertons advisor all of whom have a track record of successful dealings and delicate negotiations with the Tax Office is immensely beneficial to clients.

We remind all clients that in these times of increasingly aggressive action by the Tax Office, any notice of assessment or correspondence received from the Tax Office should be treated as a matter of urgency. ■

David Lissauer

Temporary Flood Levy Proposed

The Prime Minister, Julia Gillard, has proposed a temporary flood levy for individual taxpayers to help raise revenue to fund the reconstruction cost for areas of Queensland and elsewhere which were affected by severe flood damage earlier this year. The flood levy is proposed to apply for one financial year from 1 July 2011.

Under the proposal, individuals with a taxable income of \$50,000 or less will be exempt. However, a levy of 0.5% will be applied for individuals on taxable incomes between \$50,001 and \$100,000. A levy of 1% will be applied on taxable incomes above \$100,000. For example, under the levy, someone who has a taxable income of \$80,000 will pay \$2.88 extra per week.

Ms Gillard said those who receive the Australian Government Disaster Recovery Payment for a flood event in the 2010–2011 financial year will be exempt from paying the levy. ■



Tax Help for Flood Victims

The wake of the recent severe flooding in Queensland and elsewhere has brought about a bevy of announcements from authorities offering tax help to assist those in need.

The Government has announced that clean-up and recovery grants of up to \$25,000 (paid to primary producers and small businesses directly affected by the flooding that has occurred since 29 November 2010) will be exempt from tax.

The Government has also confirmed that the Disaster Income Recovery Subsidy to assist small business persons, farmers, and employees, who have lost their income as a direct consequence of the flooding, will be tax-exempt.



Has your business been severely affected by the flooding? You may be eligible for tax help offered by the authorities. Please call our office for further information.

In response to the floods, the Commissioner has also announced that the Tax Office will allow deductions for "bucket donations" of up to \$10 in individuals' 2010-11 tax returns without needing to keep a receipt. ■



Café Owners' Tax Bill Reduced after Cash Wages Taken into Account

In a recent case, the Administrative Appeals Tribunal found that amended tax assessments

issued to husband and wife shareholders

of a company that operated two cafés were excessive as they had failed to take into account deductions for cash wages paid to staff in determining the deemed dividend from the company, on which the assessments issued to the husband and wife were based.

The Tribunal also found that the deemed dividend was to be further reduced to take into account the company's liability for general interests charge imposed on its unpaid tax liability and a loan the husband had made to the company. As a result of these adjustments, the amount of the deemed dividend of the company on which the husband and wife's assessments were based was reduced from around \$2.1 million to some \$630,000. ■

Same Trust, so Capital Gain Can Be Offset by Earlier Losses

The Commissioner has been unsuccessful before the Full Federal Court in seeking orders to overturn an earlier decision, which had held that a trust could apply earlier capital losses to offset the capital gain made from a property sale.

The Commissioner had argued that there was a lack of continuity of the trust following a series of events and that, essentially, the trust estate which made the losses was not the same trust which made the capital gains, which meant the trust could not apply the losses to offset the gains. However, the majority of the Full Federal Court did not accept the Commissioner's arguments. ■

Superannuation Excess Contributions Tax Bill for Breach of Cap

The Administrative Appeals Tribunal has confirmed a superannuation excess non-concessional contributions tax assessment of \$86,867 against a taxpayer for breaching the \$1 million non-concessional contributions cap during the transitional period to 30 June 2007 (which existed at the time). The taxpayer had argued that a \$355,000 payment from her personal superannuation fund in June 2007 was received by her in a capacity as trustee before being on-paid to her new superannuation fund and, therefore, should be treated as a roll-over superannuation benefit. However, the Tribunal found the amount was received by the taxpayer and treated by her as an eligible termination payment before being on-paid to the new fund as a non-concessional contribution.



Different annual contribution caps apply depending on your age and whether your contributions are classified as “concessional” or “non-concessional”. Contributions above the annual contributions caps are subject to excess contributions tax levied on the individual. ■

Superannuation Benefit and Payment by Cheque

The Tax Office has issued a determination which states that a superannuation benefit payable with a cheque or promissory note is “**cash**ed” at the time the cheque or note is “**re**ceived” by the member or beneficiary, provided the trustee’s objective intention is to immediately transfer funds from the SMSF to the member or beneficiary.

The Tax Office said this will only be the case where the money is payable immediately and available for payment when the instrument is received. ■



Penalty for Late Superannuation Deduction Notice “Harsh”

In a recent case, the Administrative Appeals Tribunal determined that a 25% administrative penalty was properly imposed by the Commissioner on a taxpayer who failed to provide a notice of intent on time to claim a deduction for a personal superannuation contribution.

However, the Tribunal decided to remit in full the administrative penalty as it found it would be “harsh” for the taxpayer to pay a penalty of \$10,000 on top of the \$40,000 increase in his tax bill due to a shortcoming in paperwork.



To be eligible for a deduction for a personal superannuation contribution, the individual must:

(a) give a notice to the fund trustee stating his or her intention to claim a deduction; and

(b) receive an acknowledgment of receipt of the notice.

The notice must be given by the time the person lodges his or her income tax return for the year in which the contribution is made or, if no return has been lodged by the end of the following income year, by the end of that following year. ■

Register of Charges

We remind clients that under the Corporations Law there is an obligation to both keep, and update as required a register of charges and debentures. These registers and supporting documentation as required are held at the registered office of the company.

All company directors have an obligation to ensure these registers are up to date and, where required, documentation to support charges is located on the corporate file.

Where a company’s financial advisors maintain the company’s corporate file, we remind you to pass on to them any information pertinent to either the addition of, or removal of, any charges or debentures in your company. ■

David Lissauer



Automated Tax Deduction for Youth Allowance Recipients

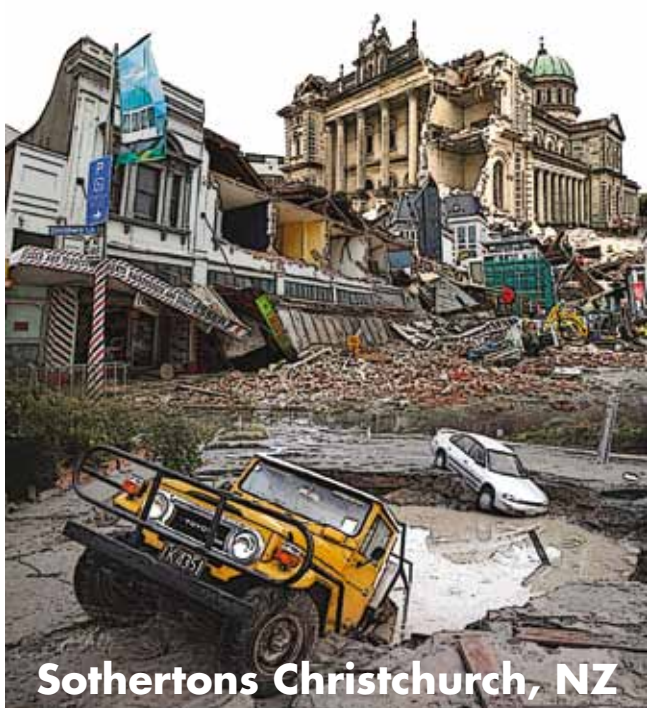
The Tax Office has released its long-anticipated response to a recent High Court decision which held that a student taxpayer was entitled to a deduction for education expenses incurred in receiving Youth Allowance income.

The Tax Office said it recognises that the High Court found that the expenses in this case were incurred in gaining or producing the Youth Allowance income received, and were not of a private nature. The Tax Office said it accepts that similar expenses would also be deductible to other full-time students receiving Youth Allowance income.

As a result, affected full-time students who received Youth Allowance and paid tax in the 2007, 2008, 2009 or 2010 income years will receive a notice from the Tax Office advising that their assessments will be amended to include a \$550 tax deduction for study expenses for each year they are eligible.



If you believe you are eligible to claim a higher amount than the automatic \$550 deduction, please contact our office. However, you must have the documentation to support your claim. ■



Sothertons Christchurch, NZ

The following is the first email response David Lissauer received from David Studholme, Principal in the Sotherton's Christchurch office after the devastating earthquake on Tuesday 22nd February.

"Hi David, we are all off site and likely to be for the foreseeable future. In response to your concern, yes we all got out alright just as the next door building started to come through our skylight.

It has been raining here since then so cannot imagine what the paper records look like. Our escape was a bit dramatic clambering over the rubble in Cashel Mall and skirting the bodies but we all got out unscathed. Our cars are still in the basement of the car parking building so not sure what is left there. We all ended up walking home which was probably the safest option.

Our office is overlooked by the Grand Chancellor Hotel and the Westpac Centre both of which are high rise and not in good shape so it is unlikely we will be allowed back in for some time but we were in the process of buying an office building in the suburbs, due to go unconditional last Wednesday, so not sure where we are with this.

As there is no sewage and little water in Christchurch at present we will probably have to operate from our own homes. I have moved out to Duvauchelle in the Akaroa Harbour area where we have everything but broadband. Next week we will get more computer gear and try and re-establish our systems.

Thanks for your concern. I will let you know how we get on.

Regards, David Studholme, Partner, Sothertons Christchurch" ■

National Paid Parental Leave Scheme has Commenced

January 1st 2011 saw the introduction of the first National Paid Parental Leave Scheme funded by the Federal Government.

The Paid Parental Leave scheme:

- is government funded
- is for eligible working parents
- can be transferred to the other parent
- is paid at the National Minimum Wage – currently \$570 a week before tax
- is for up to 18 weeks, and
- can be taken any time within the first year after birth or adoption.



You may be eligible for Parental Leave Pay if you:

- are the primary carer of a newborn child or recently adopted child
- are an Australian resident
- have met the Paid Parental Leave work test before the birth or adoption occurs
- have received an individual adjusted taxable income of \$150,000 or less in the financial year prior to the date of birth or date of claim, whichever is earlier, and
- are on leave or not working from the time you become the child's primary carer.

Who is a child's primary carer?

A child's primary carer is the person who is most meeting the child's physical needs. This will usually be the mother of a newborn child or the initial primary carer of an adopted child.

Further questions regarding entitlements and how and what employers need to do including questions as to how their employee will be paid and what employees need to attend to are all covered at the following web site: www.familyassist.gov.au/payments/

For clients who wish to find out more and do not want to avail themselves of the above site they can call **13 11 58** from anywhere in Australia.

Employers around the country can also direct their employees to **13 61 50** should they wish to ask questions. Alternatively clients can call your Sotherton's accounting services Director/Partner who will be happy to assist in any questions they may have. ■

David Lissauer

Salvation Army Flood Appeal

The December and January floods devastated Queensland, with over three quarters of the state declared a disaster zone. Being relatively unaffected by the floods, Sothertons Gladstone did their bit to assist by donating goods and money to the Salvation Army Flood Appeal.



On Friday, 14th January the team at Sothertons Gladstone collected non-perishable food, blankets, sheets, toys, clothes and pet food. Items were not only donated by our team but also by a number of clients, members of the public and team members from other Sothertons firms, who all pitched in to help those affected get back on their feet.

A total of \$1000 was donated along with a car full of goods.

Queensland has a long way to go before parts of the state are back up and running however our fighting spirit will prevail.

Thank you to all those who donated, The Salvation Army was very appreciative of our efforts. Every little bit counts. ■



Social Media and Employment

It is clear that the world is moving or indeed has moved into a new era with social communication via Facebook, MySpace and Twitter and the same being extensively used worldwide.

It appears that the majority of those using these forms of communication are under the age of 40, however many over this age bracket are starting to communicate using these mediums and the take up rate appears to be gaining strength.

It is true that many employers are also harnessing the opportunities these forms of media can offer whilst learning to come to terms with how transparent and fast moving these platforms are.

The main problem arises when a disgruntled employee posts inappropriate material on, or via these mediums and this is where it may be that these constitute a breach of employment terms.

It is paramount that employers develop and implement an effective social media policy to confront potential damage to their reputation as well as legal and financial implications.

Implementing such policies early on will assist employees in understanding boundaries. Setting up policies will also give employers the right to enforce these boundaries legally should the need arise.

The decisions in two recent cases held before Fair Work Australia clearly show how the tribunal is likely to treat these issues in the foreseeable future.

Workplace Relations lawyers suggest that a considered and thoughtful policy linked with a fair and reasonable process to deal with problems as they arise should place employers in the best possible position to protect both employees and the business whilst allowing the full potential of these social platforms to be harnessed.

Policies will need to be linked to all employment contacts be they for any future employees or those already employed. Suitable training will also need to be implemented and rolled out on a continual basis for all employees.

Should any client require specific assistance in the development of these policies we ask that you contact a suitably qualified lawyer or any of your Sotherton's Directors / Partners who will be happy to assist you. ■

David Lissauer



ScamWatch

Many of our clients have either been affected or have seen clients or friends affected by scams. The internet makes it easier for scammers to fool many people. We all need to be aware of this activity. To help, the Australian Government runs a "scam watch" site in addition to sites managed by ASIC and the ACCC.

The site www.scamwatch.gov.au is both a useful resource and is also a way to report scams.

An example can be seen below. The invoice was received by the Sothertons Melbourne office. In fact it is not an invoice for services rendered or a product purchased, rather it is an invitation to buy, carefully crafted as an invoice! Many would have paid this small invoice without giving it a second thought.

Please be aware of this form of scam and be careful when paying your invoices. In general be aware of all emails. As a rule if it sounds too good to be true or it's not commercial, it usually is not true.

Should clients have any queries in relation to these matters in the first instance contact your Director/Partner who will assist you or direct you towards experts who can assist you. ■

David Lissauer



Improve Your Chances of Getting a Loan

If you want a loan, expect a grilling from the lender. Here's what every lender will want to see.



- 1. Operation Strength:** The aim of any bank is to ensure that the business is healthy and growing, or is a start-up with great prospects. Having up-to-date information is important. Customers with a financial year ending in June should be thinking about putting forward trading results to June 2010 and also management figures, if available, for the months between June and the current date.
- 2. Cash Flow:** Your business banker will need to check that you can meet ongoing repayments and this can be an area where businesses have difficulty. A good way to help overcome this is to put together a realistic cash-flow forecast.
- 3. Security:** This is all about risk. You will enjoy a lower interest rate if you put up residential property as security.
- 4. Your Experience. Your Vision.** The reason for the funding – and what it will deliver.
- 5. The lender will check your past credit history.** Order a copy of your credit file at Dun & Bradstreet (www.dnb.com.au) or Veda Advantage (www.vedaadvantage.com). Make sure you correct any errors on the file.
- 6. Tax returns for the business for the past two years,** plus personal tax returns for the past two years.
- 7. Be prepared to deal with tighter credit terms.** Lenders may cut the loan-to-valuation ratio or impose stricter repayment terms. Work out how you would manage with a smaller loan.
- 8. Be honest.** A significant number of borrowers mislead credit providers (as many as 10 per cent of applicants, according to Verda Advantage's 2010 Australian Debt Study). Lenders are alert to the problem, and if you are found out, you won't get the finance. ■



David Lissauer

OH&S – General Hazards to consider for Queensland and Victorian Clients involved in any Flood Cleanup

The rain that fell across Queensland and Victoria in December and January 2011 caused unprecedented flooding around both states with significant hardship being felt by families and businesses. Clients in affected areas are now coming to terms with the devastation caused. As the waters have largely receded and we are now tasked with the cleanup process, there are a number of hazards that should be considered by all persons involved to ensure that no further injuries are sustained and to minimise ongoing impact of the flood on businesses.

Typical Hazards of Floodwater

Apart from the impact of fast moving water (as seen in the devastating events that occurred at Grantham and the Lockyer Valley, Queensland), hazards of entering or coming into contact with floodwater are many. These hazards can typically be grouped into the following:

- **Electrical Hazards:** Switchboards, power points, appliances that have been inundated with floodwater.
- **Biological Hazards:** Water is likely to have been contaminated through inoperable waste water treatment plants or sewer system flooding and backup (this does not include potable water supplies). There is also a greater risk of Tetanus exposure and exposure to airborne and surfaces moulds / fungi.
- **Chemical Hazards:** Water is likely to have been contaminated with chemicals such as fuels (petrol/diesel), cleaning products and any range of industrial products that may have been caught in the rising floodwater.
- **Physical Hazards:** Hazards associated with objects being damaged and potentially submerged beneath floodwater. There is also a risk of slips / falls from walking through silt that has been left behind after the flood.

The above hazard categories are by no means a full list of the hazards that may be present as this will depend on the location and flood levels experienced.

Flood Cleanup Risks

If you are one of the many people / businesses involved in any flood cleanup process, please consider the following questions and how you will manage any risk to yourself, staff, contractors or volunteers.

Removing Pooled Flood Water

- Are you using petrol / diesel / LPG powered pumps / generators in a confined area (i.e. car park) to remove water? If so, have you considered the risk of carbon monoxide accumulating in these areas? (Remember, carbon monoxide is colourless and odourless and difficult to detect.)
- Is the water likely to contain petrol / diesel from submerged vehicles or storage tanks? If so, have you considered how you will make sure you are not exposed to elevated concentrations of airborne vapour or the possibility of a fire or explosion?
- Are you required to walk into floodwaters to install pumps or inspect buildings / equipment? If so, have you decided how to do this safely (i.e. without falling into voids, tripping on submerged items, etc.). Have you also confirmed what personal protective equipment is required to prevent skin / wound exposure from contaminated water?

Cleaning Up Flood Damaged Buildings & Equipment

- Are you required to walk through silt that has accumulated after the water receded and how will you manage the risk of slipping or contaminating your street clothes?
- Does your building contain hazardous materials (asbestos) that have been affected by floodwater and how will you manage the risk of removing this material safely?
- Are you cleaning personal belongings and equipment and how will you prevent hand to mouth transfer of contaminated silt and water?
- Are you using a hazardous chemical to clean surfaces and how will you ensure that persons are not overexposed to these chemicals (e.g. chlorine)?
- As there is a lot of manual handling of damaged goods, accumulated silt, etc, how will you ensure the safety of persons undertaking continual lifting and moving of items?
- Are you required to work in the sun whilst undertaking cleanup activities and have you considered heat stress / dehydration, sun exposure, etc?

- Are you working in a location where snakes or other displaced insects / animals may be present?
- Do you need to work adjacent to, or on, a roadway and how will you manage the risk of being struck by a vehicle?

It is important to remember that even though the floodwaters have receded we still face numerous risks throughout the cleanup process. All employers have a duty of care to minimise the risk to staff and others who may be involved in the cleanup process and particularly where you have some degree of control over the safety of others.

Noel Arnold & Associates is one of Australia's largest Risk Management and OH&S Consultants. www.noel-arnold.com.au

Paying Superannuation For Contractors

The Australian Taxation Office has identified a number of industries and has cited both the accommodation and computer system design where employers may not be paying superannuation to their eligible employees or contractors.

All employers need to understand super contributions will need to be paid on behalf of all contractors paid under a contract where that contract is wholly or principally for the contractor's labour. This is the case even where a contractor quotes an Australian Business Number.

If any clients are not sure of the position they find themselves and therefore require assistance to help determine if contractors are eligible for superannuation we ask that clients contact their accounting services Director or Partner who will be more than happy to assist.

There are a number of online tools that can assist clients in making a determination. Some of these are noted below. We do stress that some tools are oversimplified which in itself can result in an incorrect recommendation being made. It is far better, even if the online tool is used, to use these as a guide and contact our offices to ensure internal decisions made are correct. Not doing so can result in an incorrect conclusion being reached and penalties being issued.

Employee / Contractor Decision Tool

For employers in the building and construction industry, use our **Building and construction industry – employee/contractor decision tool**.

For further information about employers' super obligations, refer to **Guide to superannuation employers.** ■ *David Lissauer*

The ATO set to target eBay Sellers

Taking advantage of its newly implemented IT systems to detect rorts in the cash economy, the ATO has focused on eBay sellers as its first major "identified" target.

The ATO now has access to forms of advanced data-matching through this new IT system, worth more than \$756 million.

The system enables the ATO to match reported income against records collected by banks, Centrelink and other organisations. Last year, the ATO checked over 500 million records gathered from third parties like eBay.

The renewed attack on the cash economy aims to recover millions of dollars in unreported liabilities. In 2010, the ATO recovered more than \$214 million. The ATO is confident it has enough data available to risk-assess the 1.4 million businesses with the potential to under-report their cash income.

In addition to the rigorous IT system, the ATO has applied controversial cash benchmarks to about 600,000 new businesses across more than 100 industries, including building and construction, food services, healthcare and manufacturing.

The benchmarks map what the ATO considers the expected level of cash sales, and other performance measures such as the cost of materials compared with turnover. Of the 600,000 businesses assessed in the latest crackdown, 46,000 fell outside the benchmarks.

The crackdown has also exposed sellers on online auction site eBay, and the ATO will follow up 2,200 sellers identified with under-reported income compared with eBay records.

Among those are 235 sellers who may have under-reported their incomes by \$100,000 or more. ■



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