

Your employer obligations - an update on IR, tax and super changes



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Your employer obligations - an update on IR, tax and super changes



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About the author

Glynn Flaherty



Glynn Flaherty is a director of Payroll Matters Pty Ltd, a chartered accountancy practice and registered tax agent that specialises in all payroll and employment related taxation issues. Payroll Matters contributes to many technical payroll publications, advises on taxation software products and is contracted to provide a national payroll helpline service.

Based in South Australia, the company has extensive experience in advising a diverse range of employers from large publicly listed companies right through to many charitable bodies and not for profit organisations on all tax aspects of employing staff. This includes superannuation, fringe benefits tax, salary packaging, PAYG, terminations, Payroll Tax and Workers Compensation.

The following report has been prepared for Micropay Pty Limited and represents our understanding of the laws and announcements as at 11 March 2008. It is of a general nature only and should not be relied upon in the absence of specific advice.



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Part 1. Industrial relations

In this paper we look at the changes that have occurred in the industrial relations area from the original laws through to the implementation of WorkChoices and the expected future Labor Government revisions known as Forward with Fairness.

1.1 A brief history

Prior to 27 March 2006, our industrial relations obligations consisted of a mix of federal and state laws. For those employers operating in just one state it was usually just that state's laws that applied. For example state awards, state annual leave and long service leave entitlements. For those operating in more than one state the rules became quite complex. Many will have had a mix of federal and state awards to deal with plus other state laws providing entitlements to long service leave.

In March 2006, the then Federal Coalition Government introduced a raft of changes to industrial relations referred to as WorkChoices.

1.2 What was WorkChoices?

WorkChoices was the name given to the amendments to federal industrial relations law and specifically the Workplace Relations Act. These changes meant that many employers and employees came wholly within the federal system rather than the state systems or a mixture of both. The then federal government did this by using its powers to control companies known as its Corporations Power. Thus any employer who was a company (e.g. a "Pty Ltd" or "Ltd" entity) was brought within the federal system.

In addition to companies, the laws also applied to all employers and employees already in the federal sphere such as in the Northern Territory and the Australian Capital Territory, plus all employers and employees in Victoria. All Victorian employees were included due to a referral by the state government of its industrial relations powers to the federal government many years ago.

1.3 Excluded employers

Those excluded from the changes were those who were not employed by a company such as where the employer was just an individual or partnership. They also did not apply to state government or local government employees (apart from in Victoria).

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1.4 Fair Pay and Conditions Standard

As well as bringing many employers within the federal system, WorkChoices also established a set of minimum entitlements known as the Fair Pay and Conditions Standard. This Standard set minimum entitlements for:

- Annual leave
- Personal leave
- Compassionate leave
- Parental leave

It also provided a standard 38 hour week as the ordinary hours of work (although this did not mean that staff could not work more hours) and casual loadings.

The main areas affecting payroll that remained state based were:

- Long service leave
- Workers compensation (WorkCover)
- Payroll tax

1.5 Other changes

In addition to the implementation of a national standard set of entitlements, the laws also made revisions to:

- Record keeping
- Termination entitlements (mainly notice periods)
- Probation



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1.6 The Standard

1.6.1 Annual leave

In the area of annual leave the entitlement under the *Fair Pay Standard* was the common 4 weeks per annum. This was increased to 5 weeks per annum for shift workers.

The area where the *Fair Pay Standard* differed in most respects from prior arrangements was in the manner of accruing annual leave. It was common under state laws to accrue annual leave at anniversary, i.e. yearly in arrears. Under the *Fair Pay Standard*, annual leave accrued proportionately for each four weeks worked and was credited at least monthly.

For shift workers the additional week accrued per completed twelve month period.

No annual leave accrued for any periods of unpaid leave including unpaid parental leave.

1.6.1.1 Additional aspects – cashing in

The *Fair Pay Standard* introduced the ability to cash in annual leave. This was not available to everyone and could only occur where specific conditions were met. These were as follows:

- The employee was covered by an *industrial agreement**
- The agreement specifically provided for the cashing in of annual leave
- The employee made a written request to cash in annual leave
- The employer agreed to that request

The maximum that could be cashed in was two weeks per year.

* An *industrial agreement* is an AWA or CA.

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1.6.2 Personal/sick leave

Personal leave under WorkChoices encompassed a number of types of leave. These were:

- Sick leave – which applied to the employee
- Carer's leave – which applied to leave to care for a member of the employee's immediate family or household[#]
- Compassionate leave – similar to bereavement leave but extended to leave in the case of serious illness or injury to someone who is immediate family or a member of the household[#]

[#] Immediate family members include the employee's spouse, children, parents, grandparents, grandchildren and siblings or those of their spouse. The term 'spouse' includes de facto spouse and former spouse.

Household members are not defined in the law but the term is taken as meaning those who reside with the employee.

Under the Standard, an employee received 10 days of personal leave per annum. This accrued on a pro rata basis for each four weeks worked and had to be credited at least monthly. Personal leave was cumulative.

In each year, an employee could use up to 10 days of their personal leave as paid carer's leave. This use was not cumulative. For example, an employee with three years service post 27 March 2006 will have 30 days personal leave if they have not taken any in the meantime. In that third year they could take 30 days paid sick leave for themselves or up to 10 days in that year from the balance of 30 days as paid carer's leave.

Compassionate leave was two days of paid leave per situation. It was not cumulative and did not reduce the personal leave balance.

1.6.2.1 Application

The above paid leave provisions applied to all employees except casuals. Casuals can take unpaid carer's leave. This also applies to permanent staff who had used up their 10 days per annum paid carer's leave.

1.6.2.2 Documentation

An employer could request an employee to provide them with a medical certificate or statutory declaration if it was not practical to provide a medical certificate.

Where a medical certificate was provided it must have been completed by a registered health practitioner in an area that they were licensed to practice.

An employer could also request evidence to support the eligibility for any compassionate leave claim.



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1.6.3 Parental leave

The term parental leave covered:

- Maternity leave
- Paternity leave
- Adoption leave

These were all unpaid leave under the Fair Pay Standard although some employers and awards do provide for a period of paid parental leave.

Similar to state parental leave provisions, the maximum period was 52 weeks. In the case of maternity leave, this could include six weeks prior to the expected birth and must have included six weeks after the birth. Any period of other leave e.g. annual leave was included in the 52 weeks maximum as was any leave taken by a spouse apart from the first week.

Maternity leave required the person to have been employed for at least 12 months prior to taking the leave. Maternity leave was also available for some casual staff who had been engaged on a regular and systematic basis for at least 12 months.

An employee who has taken maternity leave was entitled to return to the position they occupied prior to taking that leave.

1.7 Terminations

There were three main aspects to terminations under WorkChoices:

- Small employers (less than 15 employees) were excluded from the obligation to make redundancy payments to retrenched staff
- Employees of an employer who had not more than 100 employees were excluded from bringing an unfair dismissal claim against their employer
- Employees with not more than 6 months service with an employer (irrespective of the size of the work force) could not bring an unfair dismissal claim

Unlawful termination e.g. due to race, marital status, religion remained prohibited.

The law still nominated 3 months or another period which is reasonable having regard to the circumstances as a probationary period.

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1.8 The transition – state systems to WorkChoices

Before looking at the move from the Coalition's WorkChoices to Labor's Forward with Fairness it is worthwhile to first understand the various types of agreements that applied to staff before WorkChoices.

1.8.1 State awards

State awards as the name suggests apply in a particular state, for example a NSW Clerks Award. State awards apply where an employee in that state undertakes work that is covered by that award. This is a question of fact. If you undertake office administrative duties it is likely a state clerical award will have applied to you. There is no particular nomination by an employer to have staff covered by a state award.

1.8.2 Federal awards

Federal awards are similar to state awards in that they cover employees undertaking particular types of duties as stated in the award. They differ from state awards in two important aspects. Firstly, they can apply Australia wide and secondly, they will only apply where the employer is noted as a party to the award either directly or through their employer association. You will see appended to most federal awards a list of which organisations are covered by that award. Where a federal award applies it overrides any state award on the same class of employees.

1.8.3 State industrial agreements

At the state level we have what are usually called Enterprise Agreements (EAs) or Enterprise Bargaining Agreements (EBAs). These are ratified by the state Industrial Relations Commission and apply to nominated classes of employees of a particular employer. Some may also be limited to a specific location. These override state awards either completely or just in the areas that they cover.

EAs/EBAs are commonly used at a location to provide the same terms and conditions to a group of employees who may otherwise come under a range of state awards.

1.8.4 Federal industrial agreements

There are two types of federal agreements. These are:

- Australian Workplace Agreements (AWAs)
- Collective Agreements (CAs)

An Australian Workplace Agreement is an individual agreement between an employer and an employee.

A Collective Agreement is an agreement between an employer and a group of employees.

Both of these agreements are ratified by the Australian (federal) Industrial Relations Commission and override any awards to the contrary.



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1.8.5 The transition – state systems to WorkChoices

With the move of many employers (estimated at 85%) to the federal system there was the need for certain transitional measures. These were required where staff may have previously been under a state award or state enterprise bargaining agreement (EBA) mentioned above.

During the transition phase, these staff continued to be covered by whatever was in the state award or EBA as it existed as at 26 March 2006 but no changes made by the state government from that date had application. Future changes i.e. pay rate increases were then made by the federal authority. These transitional awards were known as NAPSAs (Notional Agreement Preserving a State Award) or PSAs (Preserved State Agreement).

It was the intention that within three years, staff covered by these NAPSAs and PSAs would move to a federal award or workplace agreement. Of course the federal election and new Labor Government has stopped that transition and we need to consider the Labor transition regime.

1.8.6 The Authorities

A number of authorities were established or had their roles modified under WorkChoices. Those that currently exist are as follows:

Organisation	Function
Award Review Task Force	Review and simplify award classifications and pay rates
Australian Fair Pay Commission	Sets wage rates for hourly pay and pieceworkers plus casual loadings
Australian Industrial Relations Commission	Dispute resolution, unfair dismissal, regulating industrial action as well as rationalising and simplifying awards
Office of the Employment Advocate (OEA)	Provide advice on industrial agreements and act as lodgement office for all AWAs and CAs
Office of Workplace Services	Responsible for enforcement and compliance of the Workplace Relations Act

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1.9 The federal election

We now have the interesting dilemma of a federal election being held during the transition phase of WorkChoices and the subsequent election of a Labor Government. As part of the election process, the Labor Government promised to dismantle WorkChoices.

We therefore need to consider what will be left if WorkChoices is dismantled?

At the time of preparing this paper, the new federal parliament was still considering the initial set of changes to implement the first part of the Forward with Fairness policy. Therefore the details provided below are based on the draft legislation and policy announcements by the federal government rather than any final legislation.

1.9.1 The main changes – WorkChoices to Forward with Fairness

The new federal Labor Government has indicated that it has six main areas that it will change in the federal industrial relations area under its Forward with Fairness platform. These are to:

- Include all employees in the federal system except those employed by state governments (Victorian state Government employees are within the federal system and are likely to remain so)
- Implement National Employment Standards
- Review and streamline the (federal) award system
- Revise unfair dismissal provisions
- Review and streamline the federal award system
- Maintain Collective Agreements (CAs) but exclude any future Australian Workplace Agreements (AWAs). As an interim measure Individual Transitional Employment Agreements (ITEAs) will be used

1.9.2 Expansion of the federal award system

As mentioned earlier, under WorkChoices the then federal government relied on its corporations power to bring employers and employees within the federal system. Thus those employed by sole traders or partnerships (e.g. many law and accounting practices) did not come within the federal system. The federal Labor Government has indicated its intention to now include those employers and employees. This will require the state governments to “refer” their industrial relations powers to the federal government similar to what happened in Victoria. At this stage, the states are resisting such referring.

For most payroll staff the employer will be a company structure and thus this area will not have any particular relevance. However we can expect to see some commentary on the issue of state vs. federal governments over the coming months in the news.



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1.9.3 National Employment Standards

The Labor Government proposes to implement ten National Employment Standards. These are to cover:

- Hours of work
- Parental leave
- Flexible work for parents
- Annual leave
- Personal, carer's and compassionate leave
- Community service leave
- Public holidays
- Information in the workplace
- Notice of termination and redundancy
- Long service leave

The National Employment Standards for hours of work, annual leave, personal, carer's and compassionate leave essentially mirror the current Fair Pay and Conditions Standard. Therefore the following commentary looks at the areas that differ from our present entitlements.

1.9.3.1 Parental leave

One of the main enhancements to the current Fair Pay and Conditions Standard is in the area of parental leave

The intention is that both parents will be able to take up to 12 months unpaid parental leave on the birth of a child at separate times or one parent will be able to take up to 24 months unpaid parental leave. An employer may only refuse the additional leave on reasonable business grounds.

1.9.3.2 Flexible work practices

Flexible work practices will be stated in awards and will cover areas such as:

- Rostering and hours of work
- Starting or finishing early to accommodate school picks up and drop offs without penalty rates applying to the early start

It is also intended that parents may seek access to flexible work practices until the child reaches school age. Again an employer may only refuse on reasonable business grounds.

Such arrangements will need to be in writing between the employer and employee.

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1.9.3.3 Community service leave

This is leave for jury duty or emergency services. Whilst jury duty is usually paid under the various Court Acts, emergency services leave remains unpaid.

1.9.3.4 Public holidays

Certain days will be guaranteed as public holidays such as Christmas Day. Any award employee working on those days will receive penalty rates.

1.9.3.5 Information statements

The Labor Government is proposing that all employees must be given a “Fair Work Information Statement” that explains an employee’s rights and entitlements at work.

1.9.3.6 Termination entitlements

1.9.3.6a Redundancy

The current laws do not specify what must be paid where a person is retrenched. This has been left to the awards, industrial agreements or employer policy. It is proposed that the entitlements which appear in federal awards will be adopted as a minimum for most staff where 15 or more persons are employed. These are as follows:

Period of continuous service	Severance pay
Less than 1 year	Nil
1 year and less than 2 years	4 weeks pay
2 years and less than 3 years	6 weeks pay
3 years and less than 4 years	7 weeks pay
4 years and less than 5 years	8 weeks pay
5 years and less than 6 years	10 weeks pay
6 years and less than 7 years	11 weeks pay
7 years and less than 8 years	13 weeks pay
8 years and less than 9 years	14 weeks pay
9 years and less than 10 years	16 weeks pay
10 years and over	12 weeks pay [#]

[#] A lower entitlement on the basis that all such staff will also receive long service leave entitlements.



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1.9.3.6b Notice period

The current periods of notice where an employer wants to terminate the employment contract will continue under the Labor proposals. These are as follows:

Period of continuous service	Period of notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

An employee over 45 years of age with not less than two years continuous service will be entitled to an additional one week's notice.

1.9.3.7 Long service leave

It is intended to canvas the adoption of a standard set of long service leave entitlements. This will require consultation with the states. The Labor Government has indicated that entitlements which existed prior to the move to any national standard will remain preserved. Thus we would expect that if the move was to 8.667 weeks after 10 years, those staff who were previously entitled to 13 weeks after 10 years will keep whatever has accrued prior to the change.

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1.9.4 Revise the application of unfair dismissal laws

The Labor Government proposes to implement unfair dismissal protection for all employees. This will apply:

- After 6 months service if the employer has 15 or more employees
- After 12 months service if the employer has less than 15 employees

No unfair dismissal protection applies for employees earning more than \$101,300 (indexed) per annum.

1.9.4.1 Unlawful dismissal

The unlawful dismissal rules e.g. termination due to race, religion, marital status etc, will continue to apply.

1.9.5 Review and streamline the (federal) award system

It is intended to establish a Fair Work Australia Authority to administer industrial relations. This will determine minimum wages and review awards.

New pay rates will be published each year to allow them to apply from 1 July.

1.9.6 Collective Agreements (CAs) & Australian Workplace Agreements (AWAs)

Collective Agreements will remain and will override awards where they are applicable.

AWAs will not form part of the new approach but existing AWAs will continue until expiry – no later than 31 December 2012. Employment contracts can be used for employees earning more than \$100,000 per annum, i.e. these staff can be award free.

During the transition period to 31 December 2009, Individual Transitional Employment Agreements (ITEAs) will be available to be used as a replacement for AWAs. These must pass a no disadvantage test when compared to any relevant award or collective agreement. If an AWA ceases and an ITEA is not used then the employee's terms and conditions of employment will revert to the relevant award or collective agreement that is in place.



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1.9.7 The transition timeline to Forward with Fairness

The following is an indication of how the transition is proposed to occur:

Date	Activity	Comments
January 2008	The Australian Industrial Relations Commission (AIRC) begins reviewing current federal awards	The intention is to reduce the number of awards and simplify their content by 1 January 2010
February 2008	Draft legislation introduced into federal parliament	To set in place the transition to the Labor Forward with Fairness policies
Expected by April 2008	No future AWAs but current AWAs continue until expiry Introduction of Individual Transitional Employment Agreements (ITEAs) as a replacement for new individual agreements	ITEAs will expire by 31 December 2009
1 January 2010	New award system commences 10 National Employment Standards commence ITEAs cease Fair Work Australia Authority established	
31 December 2012	All AWAs cease	

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1.10 Federal record keeping rules

Whilst not part of any Labor proposals, there were a number of changes to the record keeping rules in the first 12 months of WorkChoices. The current rules which are expected to continue to apply to each of the following employee record types:

- General records
- Pay records
- Leave records
- Superannuation
- Terminations
- Pay slips

1.10.1 General records

Item	Comments
Employer name	
Employee name	
Employment type	Full time, part time or casual
Date employment began	
Paid overtime (if applicable)	Start & finish time, number of hours
Averaging of hours	Written agreement

1.10.2 Pay records

Item	Comments
Rate of remuneration	
Hours worked	Only for casual employees and for any part timers working irregular hours
Any bonus, loading, penalty rate or separate allowances	Details of payment
Gross amount paid	
Net amount paid	
Deductions from gross amount	e.g. ANZ \$500



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1.10.3 Leave records

Item	Comments
Accrual	
Leave taken	
Leave balance	
Cashed in leave (where available)	Copy of written election by employee, rate of payment and when paid

1.10.4 Superannuation

Item	Comments
Amount	(excludes defined benefit funds)
Period covered	
Date/s made	
Fund name	
Basis (award, salary sacrifice, mandatory, etc)	Copy of any employee election including date made

1.10.5 Termination

Item	Comments
Basis	By consent, notice or summarily
Who by	Name of who terminated the employment

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1.10.6 Pay slips

Item	Comments
Employer name	
Employee name	
Date payment made	
Period covered	
Pay rate (if hourly)	Ordinary hourly rate and number of hours x total paid at that rate
Pay rate (if annualised)	Annual rate at date of payment
Gross pay	
Net pay	
Any separately identifiable entitlements	Bonus, commission, loading, penalty and/or allowances
Deductions	Amount plus name or name and number of the fund or account into which paid
Superannuation contribution	Amount contributed or liable to contribute for the period plus Fund name (excluding defined benefit funds)

1.10.7 Main changes

The main changes to employee record keeping that did occur when WorkChoices was implemented are summarised as follows:

- Job classification no longer required on pay slips
- Superannuation put aside (but not yet paid) can be shown on the pay slip instead of the actual superannuation paid in the period
- Daily start and finish times and total hours worked are only required for casual employees. For part timers it is only required for those who work irregular hours. For all other employees, daily start and finish times and total hours worked will be only be required when they work paid overtime and then only in relation to that overtime



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Part 2. Taxation

Below are the main state and federal changes that have occurred or are to occur that will have an effect on payroll.

2.1 Background – Payroll Tax

There has been a move to standardisation of the various state based payroll tax systems. The first states to do this were New South Wales and Victoria where changes commenced on 1 July 2007. Queensland and South Australia have announced they will also implement some standardisation from 1 July 2008 and have provided details of what those changes will be. Western Australia is understood to be similarly looking at implementing changes from 1 July 2008 although the actual details have not yet been released.

2.2 State changes

New South Wales and Victorian payroll tax changes

Changes to the payroll tax obligations in New South Wales and Victoria have been passed by the relevant state parliaments and become law. These changes commenced from 1 July 2007.

Area	New NSW & VIC laws	Prior NSW law	Prior VIC law
Fringe benefits	Include grossed up taxable values as per FBT laws but using only the lower (1.8692) gross up factor	Include grossed up taxable values as per FBT laws using two gross up factors (1.8692 and 2.0647)	Include grossed up taxable values as per FBT laws using two gross up factors (1.8692 and 2.0647)
Motor vehicle c/km allowances	Excluded up to ATO maximum rate for the prior income year — this will be 70 c/km for 2007/08 payroll tax purposes	Excluded up to 67c/km or per award rate	Excluded up to 53.5c/km or reasonable rate based on award or industry standard
Accommodation allowance —overnight stay away	Excluded up to a specified ATO daily travel allowance. This is expected to be \$201.25 per night (2007/08 ATO rate)	Excluded up to \$195 per night or award rate	Excluded up to \$130 per night
Maternity/adoption leave	First 14 weeks of such paid leave exempted	Not previously excluded	Already excluded

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Area	New NSW & VIC laws	Prior NSW law	Prior VIC law
Volunteer bushfire/ emergency workers	Exclude wages paid by employer whilst performing such services and not otherwise on paid leave	Already excluded	Not previously excluded
Portable long service leave and redundancy schemes	Excluded from payroll tax	Included only until 30 June 2006, rather than 2007	Already excluded
Overseas workers	If overseas for more than 6 months, all wages exempt including first 6 months	First 6 months was included	First 6 months was included
Employee share schemes	Include value of share or option	Already included	Previously excluded
Charitable body employees undertaking such work	Exemption of wages	Not previously exempted	Not previously exempted
Trust distributions	Excluded even if in lieu of wages to a beneficiary	Previously included	Already excluded
Designated group employer	One employer (if a member of a group) must be appointed to claim any threshold	Not previously required	Already applies
Contractor exclusion for payments above \$800,000	This specific exclusion has been deleted	Previously exclusion applied	Not applicable
Grouping provisions	Control defined as more than 50%	Already applies	Previously was 50% or more
Annual return due date	21 July	21 July lodgement date already applies	Previous lodgement date was 7 July
Refunds or reassessments	5 Year rule	Already applies	Previously 3 years
Employment agents	No exclusion for wages paid to staff who undertake duties for clients whose own wages are less than the payroll tax threshold	Previously excluded	No exclusion already applies



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2.2.1 Victoria

Payroll tax rate

The applicable payroll tax rates and dates of effect are as follows:

- 5.05% from 1 January 2007 to 30 June 2008
- 5% from 1 July 2008 onwards

2.2.2 Western Australia

Payroll Tax

The Western Australian payroll tax laws are expected to be revised from 1 July 2008. Those revisions are likely to be in line with those that have already been implemented in New South Wales and Victoria.

2.2.3 Queensland

From 1 July 2008, Queensland payroll tax laws will be standardised with those applying in New South Wales and Victoria in a number of key areas. The main changes and those areas that remain the same are summarised in the following table:

Area	From 1 July 2008	To 30 June 2008
Fringe benefits	Include grossed up taxable values as per FBT laws but using only the lower (1.8692) gross up factor	Include grossed up taxable values as per FBT laws using two gross up factors (1.8692 and 2.0647)
Motor vehicle c/km allowances	Excluded up to ATO maximum rate for the prior income year — (currently 70 c/km but new rate expected in Feb 2008)	Excluded up to 50c/km
Accommodation allowance - overnight stay away	Excluded up to a specified ATO daily travel allowance - (currently \$201.25 per night but new rate expected on 1 July 2008)	Excluded up to \$90 per night
Maternity/adoption leave	First 14 weeks of such paid leave exempted	Not previously excluded
Volunteer bushfire/emergency workers	Exclude wages paid by employer whilst performing such services and not otherwise on paid leave	Not previously excluded
Portable long service leave and redundancy schemes	Excluded from payroll tax	Already excluded

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Area	From 1 July 2008	To 30 June 2008
Overseas workers	If overseas for more than 6 months, all wages exempt including first 6 months	Already applies
Employee share schemes	Include value of share or option	Not previously included
Charitable body employees undertaking such work	Exemption of wages	Already applies
Designated group employer	One employer (if a member of a group) must be appointed to claim any threshold	Already applies
Contractor payments	Adopt the relevant contract provisions as per NSW and VIC	No specific contractor laws
Grouping provisions	Control defined as more than 50%, standardised grouping rules as per NSW and VIC	Previously 50% or more
Annual return due date	21 July	21 July lodgement date already applies
CDEP wages	Excluded	Included
Death benefit termination payments	Included	Previously excluded

2.2.4 South Australia

Payroll Tax

The payroll tax rate is to reduce from 5.25% to 5.0% from 1 July 2008 for wages paid or payable on or after this date.

Payroll Tax 2008-09 changes

Revenue SA has published circular outlining changes that will be made in SA from 1 July 2008 to harmonise their payroll tax laws to those applying in other jurisdictions. This comments made in the circular are not yet contained in any legislation and as stated are not to apply until 1 July 2008. A copy of the circular can be accessed at the following link:

<http://www.revenuesa.sa.gov.au/circulars/c280.html>



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2.2.5 Australian Capital Territory

Legislation has been passed to harmonise with the eastern states on payroll tax aspects from 1 July 2008.

2.2.6 Northern Territory and Tasmania

No changes have yet been announced to Payroll Tax although we would expect that they will follow the revisions applying in New South Wales and Victoria.

2.3 Federal changes

Changes that commenced on 1 July 2007

The main federal changes affecting payroll that applied from 1 July 2007 are detailed below:

2.3.1 Terminations

The main federal changes affecting payroll termination processes that applied from 1 July 2007 are detailed below:

2.3.1.1 ETPs – a new name

Under the changes, the term ETP (Eligible Termination Payment) is replaced by two new terms depending on who is making the payment. These are:

- Superannuation Lump Sum – for super fund payments
- Employment Termination Payments – for employer payments

2.3.1.2 ETPs – three types

For employer paid ETPs, there are now 3 different types. These are:

- Life Benefit ETP
- Transitional ETP
- Death Benefit ETP

The only amounts that can be rolled over from 1 July 2007 are Transitional ETPs. These rules will apply until 30 June 2012.

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2.3.1.3 What is a Transitional ETP?

The new laws provide little guidance on what real life examples will be Transitional ETPs.

The law states that a Transitional ETP is one where:

- There was an entitlement of a specified amount in existence as at 9 May 2006
- The actual amount could be determined at that date; or
- If an actual amount is not specified, a formula or calculation is specified instead, detailing how the amount will be determined upon termination

The logic to follow is therefore:

What is being paid out that may be an ETP?

Was the particular person employed by the employer as at 9 May 2006?

Is there an entitlement of a specified amount that:

- Could be determined as a dollar figure as at 9 May 2006; or
- Could be determined by a formula or calculation detailed at that date that would then be calculated on termination

Was there an award, agreement, contract of law at that time that provided for the specified payment?

Is it the same award, agreement, contract of law that is now providing the specified payment?



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2.3.1.4 Practical examples

FTP	Classification	Comment
Payment in lieu	Transitional in most cases as contained in most agreements, awards and the law	Workplace Relations Act provides for this for nearly all staff and was in operation as at 9 May 2006
Redundancy pay	Transitional – formula specifying what is to be paid	If in award etc at 9 May 2006 and same award etc applied to employee when terminated
RDOs	Transitional if award etc specifies what will be paid on termination	Check if covered by award etc as at 9 May 2006 which provided for them to be paid on termination
Gratuity	No	Not a specified payment as at 9 May 2006
Settlement	No	Not a specified entitlement as at 9 May 2006
Sick leave (assume paid on termination)	Transitional if mandatory payment on termination	Depends on whether a specified payment under an award etc applying to that employee as at 9 May 2006

Where the award, agreement etc has changed since 9 May 2006 then the payment will not be a Transitional ETP. This is because it is no longer an entitlement that was specified under the same award etc applying as at 9 May 2006.

2.3.2 New forms

With new procedures come a number of new forms. These are summarised as follows:

To 30 June 2007	From 1 July 2007
ETP pre-payment statement	Transitional termination payment pre-payment statement
ETP payment summary	PAYG payment statement – employment termination payment
Rollover statement	Directed termination payment statement
RBL form	Abolished

Most of the forms can be downloaded from the ATO website except the PAYG payment statement – employment termination payment, which has to be on an ATO original.

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2.3.3 Calculation and taxing rules – ETPs

Pre 83 and post 83

Under the new rules we still need to calculate a pre '83 and post '83 ETP element for those who commenced prior to 1 July 1983. However these elements have now be renamed as the:

Tax free ETP component – pre July 1983; and
Taxable ETP component – post June 1983

As before, we do not withhold any tax from what is now known as the tax free component but it is now fully tax free. Prior to 1 July 2007, 5% was assessable to the employee.

2.3.4 ETP limits

Under the new rules, there are two limits introduced which are called “caps”.

There is one cap for those aged 55 or over. This applies to all ETPs taken in cash. There are also new caps for all employees on the amounts that get concessional tax treatment. If these new caps are exceeded tax must be withheld at 46.5% on the excess.

The amount of these caps depends on the type of ETP being paid, i.e. is it a Life Benefit ETP or a Transitional ETP?



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2.3.5 ETP cap/lower threshold cap

This ETP cap has two applications:

- It is the maximum of any ETP category that can be paid to a former employee aged 55 or over that is taxed at 16.5% irrespective of the type of ETP
- It is the maximum amount of a Life Benefit ETP that receives any tax concessions - any excess is taxed at 46.5%

The ETP cap/lower threshold cap for 2007/08 is:

- \$ 140,000

ETP type	Age 55+	Age under 55	Above \$140,000
Life Benefit	16.5% first \$140,000	31.5% first \$140,000	46.5%
Transitional	16.5% first \$140,000	31.5% first \$140,000	See upper cap

Handy hint

For the age 55 rule you now must look at the former employee's age at the end of the income year in which payment is made and not at the age at date of payment.

ETP upper threshold cap

This only applies to Transitional ETPs and is the upper limit at which the taxable component of a Transitional ETP can receive concessional tax treatment. Any excess (irrespective of age) will be subject to tax being withheld at 46.5%.

The ETP upper threshold cap for all ages for Transitional ETPs is:

- \$1,000,000

Handy hint

The caps only apply to the taxable component of an ETP.

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2.3.6 How the caps apply

The following summarises the new tax withholding rules with the caps:

ETP type	Previous name	New name	Age under 55 at income year end	Age 55+ at income year end
Life Benefit ETP	Pre July 1983 component	Tax free component	Nil, tax free	Nil, tax free
	Post June 1983 component	Taxable component	31.5% first \$140,000, 46.5% on any excess	16.5% first \$140,000, 46.5% on any excess
Transitional ETP	Pre July 1983 component	Tax free component	Nil, tax free	Nil, tax free
	Post June 1983 component	Taxable component	31.5% first \$1,000,000, 46.5% on any excess	16.5% first \$140,000, 31.5% on next \$860,000, 46.5% on any excess

2.3.7 2008/09 personal income tax rates

The *likely* 2008/09 personal tax rates are as follows:

2008-09 (proposed)

Income	Tax rate %*
Up to \$6,000	Nil
\$6,001 to \$34,000	15
\$34,001 to \$80,000	30
\$80,001 to \$180,000	40
\$180,001 and over	45

* Plus Medicare levy of 1.5%



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2.4 FBT update – what payroll needs to know

2.4.1 FBT thresholds

Changes have been made to a number of FBT thresholds. Some of these may impact on payroll staff depending on their involvement in the FBT area. The changes are as follows:

2.4.2 Reportable fringe benefits

The disclosure threshold has increased from “above \$1,000” to “above \$2,000” of taxable value. This means that where an employee is provided with fringe benefits whose taxable value does not exceed \$2,000, no amount will be disclosed on the employee’s year end payment summary in the reportable fringe benefits label.

Handy hint

The minimum amount that should appear on a payment summary as a RFB will now be \$3,740 (i.e. \$2,001 x 1.8692)

2.4.3 Cars and reportable fringe benefits

New laws have also been enabled which in certain circumstances will exclude the value of a car fringe benefit from being shown as part of an employee’s reportable fringe benefit on the year end payment summary.

This exclusion will apply where the car is provided for the private use of two or more employees as commonly occurs with pooled or share cars. Without this exclusion, the fringe benefits tax value of the car would be apportioned to those individuals. This exclusion has no effect on the normal FBT liability for these types of benefits.

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Part 3. Superannuation

Below are changes that have already occurred in the superannuation area and the laws that come into effect from 1 July 2008.

3.1 1 July 2007 changes

3.1.1 Extension of age to make deductible contributions

Up until 30 June 2007, super contributions could be made providing the person did not exceed 70 years of age. From 1 July 2007 this was increased to age 75. At this stage there has been no announcement to adjust the superannuation guarantee exclusion on the same basis so the cut-off for employers to make contributions under super law should remain at age 70.

3.1.2 Maximum superannuation contributions base

For the 2007-08 income year the maximum contributions base is \$36,470 which represents a contribution at 9% of \$3,282.30 per quarter.

3.1.3 Superannuation funds and participating employers

The Government has legislated to stop public offer funds requiring employers to become 'participating employers'. The measure took effect from 1 July 2007.

3.2 1st July 2008 changes

3.2.1 Earnings bases

Presently, an employer's obligations to make superannuation contributions to an accumulation fund depend on the earnings base used. That earnings base may be:

- As contained in an award
- In a fund trust deed (if the fund was contributed to prior to 19 August 1991); or
- The default earnings base being ordinary time earnings (OTE)

From 1 July 2008, OTE will be the standard earnings base used to calculate all contributions.

OTE applies where neither of the others is applicable.



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3.2.2 Ordinary time earnings

OTE is a defined term and means the amounts that an employee receives for their ordinary work hours. It includes the earnings for shift work, over-award payments and commissions.

The ATO publishes a list of what is included and excluded from this definition, a copy of which can be obtained at www.ato.gov.au. A quick summary appears overleaf.

The main inclusions are:

- Salary
- Director's fees
- Commissions
- Bonuses related to performance of work
- Shift loadings
- Allowances generally e.g. first aid, height or site allowance (but not work related cents per km or those expected to be fully expended in deriving income)
- Annual, sick and long service leave payments – employment continuing
- Cashed in long service leave (where available)

The main exclusions are:

- Overtime
- Overtime meal allowance
- Work related cents per kilometre reimbursements
- Other allowances expected to be subject to an offsetting deduction for the whole amount
- Fringe benefits
- Superannuation
- Non work related bonuses e.g. Christmas bonus
- Employment termination payments
- Accrued annual or long service leave paid on termination
- Redundancy payments
- Payments in lieu of notice

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3.2.3 Ordinary time earnings - summary

Included	Excluded
Salary and wage payments	Payment in lieu of notice
Sick leave	Redundancy pay
Commissions	Workers compensation payments
Annual and long service leave taken	Top up pay in addition to workers compensation – unless worked performed
Bonuses related to performance of work	Cents per km for work use of car and other allowances fully expended in deriving income, e.g. car, tool, uniform and laundry allowances
Allowances generally not related to deductible expenses e.g. first aid, dirt, site etc	Overtime
Directors fees to individuals	Overtime meal allowance
Shift loadings	Fringe benefits and reimbursements
Casual loading	Accrued annual & long service leave paid on termination
	Employer & sacrificed superannuation
	Jury duty or defence force leave top up payments
	Christmas bonus - i.e. non work related
	Leave loading
	Payments whilst on maternity/paternity leave



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Part 4. More information

This report has been prepared for Micropay Pty Limited and is of a general nature only and should not be relied upon in the absence of specific advice.

Useful links

Organisation	Telephone	Website
Superannuation Helpline	13 10 20	www.ato.gov.au/super
Australian Taxation Office	Refer to website for telephone numbers	www.ato.gov.au
WorkChoices Infoline	1300 363 264	www.workchoices.gov.au
State and federal legislation <ul style="list-style-type: none"> • Australasian Legal Information Institute or • Commonwealth Law 	Refer to websites for telephone numbers	www.austlii.edu.au or www.comlaw.gov.au

Payroll Tax contacts

State / Territory	Telephone	Website
Victoria	132 161	www.sro.vic.gov.au
Queensland	1300 300 734	www.osr.qld.gov.au
South Australia	08 8204 9880	www.revenuesa.sa.gov.au
New South Wales	02 9689 6200	www.osr.nsw.gov.au
Northern Territory	08 8999 7949	www.nt.gov.au/ntt/revenue
Australian Capital Territory	02 6207 0088	www.revenue.act.gov.au
Tasmania	03 6233 2813	www.treasury.tas.gov.au/tax
Western Australia	08 9262 1300	www.dtf.wa.gov.au/cms/osr_index.asp

Further information on the current and new industrial relations obligations can be obtained from the websites listed above, your own employer associations or from your industrial relations advisers.

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About Sage Micropay

Founded in 1985, Sage Micropay is a leading developer and supplier of payroll and human capital management software and services, with a broad range of clients across the country.

Our solutions are designed specifically for Australian companies – a crucial factor which ensures our payroll and HR software complies with relevant state and federal tax and statutory requirements.

The combination of over 20 years experience, our extensive user base and local focus also ensures that clients obtain cost effective and smooth implementation and easy integration into their own financial and IT frameworks. In addition, as part of the Sage Group, Sage Micropay benefits from global software development expertise & best practice service standards.

Sage Micropay also provides comprehensive professional services and support, so that, right from the start, clients gain the greatest benefits from their investment in a Sage Micropay solution.

Services include: on-line and telephone support, on-site consulting, specialist recruitment, ongoing education courses, payroll outsourcing and related stationery.

Managing the workforce in a changing environment

The workforce and how organisations interact with their employees is evolving - never before has attracting and retaining talent been such a clear focus for Australian companies.

At Sage Micropay we develop functionally rich systems that facilitate employee engagement and promote long-term retention. These tools assist organisations to effectively recruit, retain, develop and deploy talent. With more than 6,000 clients across Australia we understand the importance of effective talent management strategies, especially in today's shrinking labour market.

Sage Micropay payroll management and reporting

Sage Micropay has clients within all types of industry and naturally we understand that every organisation is different and so are their payroll needs. We have a portfolio of payroll software products and services that are designed to meet the needs of small, medium and large organisations.

WageEasy is suited to small organisations that want a nimble payroll/HR system which can quickly and effectively process the payroll without the burden of features they don't need.

Micropay Meridian and **Micropay Ingenuity** are ideal systems for medium to large organisations that require a flexible, cost effective solution which is powerful enough to meet their complex needs while minimising manual intervention and eliminating risk.



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Employee/Manager Self Service (ESS) capabilities are an important part of most payroll/HR systems these days. Today's workforce needs to be empowered to process leave requests, view pay advices and manage their personal data. At Sage Micropay we offer this productivity enabling functionality with our Meridian and Ingenuity payroll solutions.

Sage Micropay human capital management

The extreme competition for talent is set to continue and many Australian companies are looking to technology to assist them. The comprehensive ConnX e-HR system has been developed to meet the challenges of managing today's workforce. It is a web-based, modular human capital management platform designed to assist organisations with all aspects of their talent management and HR needs.

The **ConnX Employee Services Portal (ESP)** is the foundation module and as well as providing ESS/MSS functionality, it also manages human capital data for your workforce. In addition ConnX ESP boasts a powerful workflow engine that manages employee requests - ensuring their timely response by managers.

ConnX Talent Management comprises of four modules. All are supported by a powerful foundation of Positions and Skills that enhance the Talent Management modules. The four modules can be purchased individually and are:

- ConnX Performance Reviews
- ConnX Learning & Education
- ConnX Recruitment
- ConnX Workforce Planning

ConnX e-HR is the complete package of all the ConnX modules to form one comprehensive e-HR solution to aid organisations seeking a Total Human Capital Management Solution. As well as all of the modules listed above we add the following:

- ConnX Timesheet Management
- ConnX OH&S
- ConnX Management Reporting

NB: Sage Micropay's software products are designed with the flexibility to comply with most company workplace requirements and applicable legislative requirements.

Please contact us to discuss how we can assist with your payroll and/or human capital management needs.

www.sagemicropay.com.au
1300 729 229