



WA CONSTRUCTION INDUSTRY REDUNDANCY FUND

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ABN 12 230 821 810

30 March 2006

Dear Employer

FRINGE BENEFITS TAX ON REDUNDANCY CONTRIBUTIONS

Over the past four years we have been advising you that the Federal Government through the Taxation Office would commence to impose FBT on redundancy contributions, subject to certain exemptions.

All contributions to the WACIRF No.2 Fund are currently FBT-exempt under transitional provisions of the FBT legislation but that transitional exemption will cease from 1 April 2006.

From 1 April 2006 the FBT legislation will only provide FBT-exemption if contributions are made to the Fund for the purpose of satisfying an "industrial instrument" (Award or registered industrial agreement) termination/severance payment obligation.

The Fund has been actively lobbying government politicians to have the laws changed to remove the requirements that continued FBT-exemption would be dependent upon the existence of such an Award or registered agreement obligation. Those requirements arguably excluding FBT-exemption for a majority of WA employers who make contributions to the Fund to satisfy 'over-Award' termination/severance payments.

As recently as November 2005 the CEO of the Fund and our solicitor travelled to Canberra to seek to resolve the WA employers' problem with the Assistant Treasurer, the Hon. Mal Brough. Although the Assistant Treasurer could not be convinced to support legislative changes the meetings with him and officials from Treasury, the Workplace Relations office and the Tax Office facilitated a successful application by the Fund for a Class Ruling that will have the effect of ensuring that the Commissioner of Taxation will continue to treat 'over-Award' redundancy contributions paid into the WACIRF No.2 Fund as FBT exempt.

This Class Ruling is expressed to apply to 'over-Award' contributions up to 31 March 2011 so long as an employer is contributing amounts to the WACIRF No.2 Fund, at rates provided for in the Funds' Trust Deed and Regulations, in lieu of (and in satisfaction of) continuing obligations to make Award redundancy payments. The period during which there will be that required Award redundancy obligation will be dependent upon whether an employer is covered by a Federal or WA Award, incorporated or not and whether employing less than 15 employees. Transitional provisions of the Workplace Relations Act will, for between 3 and 5 years, maintain the Class Ruling's required continuance of an incorporated employer's Award redundancy obligation. In the absence of amendment to the relevant WA Award the required Award redundancy obligation will remain for the whole of the 5-year life of the Class Ruling.

The Fund has sought to protect the position of its members the best it can by obtaining the Class Ruling that can be relied upon by employer members. However Class Rulings can be withdrawn by the Commissioner or overturned by a subsequent Public Ruling. Individual employers can however, apply for a Private Ruling ('riding on the back' of the reasoning in the Class Ruling,) which would not be capable of being withdrawn and ensure continued FBT-exemption. Employers who are interested should contact the undersigned who will, if



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sufficient employers are interested, take the matter up with our solicitors with a view to preparation of Applications for Private Rulings at volume discounted rates (probably in the vicinity of \$750 per application).

My understanding is that contributions by an employer under a registered industrial agreement will remain exempt from FBT, as such an agreement satisfies the FBT law's requirement for an "industrial instrument". However I emphasise that this is my interpretation of the FBT law and it is not covered by this Class Ruling. If an employer agrees to pay more than that specified in the registered agreement they could be required to pay FBT on the full amount as it is greater than the registered agreement. They cannot rely on over award payments exemption covered by this Class Ruling. Employers with registered agreements might also like to consider obtaining the certainty of Private Rulings and the undersigned is confident that he can arrange similar volume discount rates with our solicitors.

The interaction of FBT exemption provisions and the recent 'Work Choices' amendments are complicated and you may require further advice. Should any member wish to discuss the content of the Class Ruling in more detail feel free to contact the undersigned, but employers will appreciate that neither he or the Fund Trustee can provide advice as to the particular circumstances of an Employer. We can direct employers to our solicitors who will be in a position, having regard to their research as to the Application for the Class Ruling, to expeditiously and cost effectively deal with an employer's particular circumstances.

For those wishing to obtain a copy of the class ruling go to the WA Construction Industry Redundancy Fund web site at www.wacirf.com.au and under the Redundancy tab, then the Fund No 2 section and you will find a copy of the ruling.

Yours faithfully

Murray Rzepecki
CHIEF EXECUTIVE OFFICER

COMPANY SECRETARY