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Association of Consulting Architects
New South Wales and ACT

Communique
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ANNUAL HOLIDAYS 2009

New Year's Day	Thursday	1st January
Australia Day	Monday	26th January
Good Friday	Friday	10th April
Easter Saturday	Saturday	11th April
Easter Monday	Monday	13th April
Anzac Day - NSW	Saturday	25th April
Anzac Day - ACT	Monday	27th April
Queen's Birthday	Monday	8th June
Labour Day	Monday	5th October
Christmas Day	Friday	25th December
Boxing Day	Monday	28th December

The ACT has Canberra Day and the Awards (State and Federal) still hold an additional public holiday. Generally both these days default to the Tuesday after Easter. Award days can be located on any other day with the agreement of the majority of employees.

FAIR TRADING (CLARITY IN PRICING) ACT - FEDERAL

Most members will be aware of the recent commencement of an Act amending the Federal Fair Trading Act (FTA) which was reported in the press as affecting restaurants, airlines and car dealers. The essence of the new law is to require organisations to display the full price of goods and services offered by organisations to individuals. This effectively outlawed pricing which had standard additional costs which were unavoidable if someone choose to purchase. Vehicles can no longer be advertised as "$34,589 + ORC". Restaurants are no longer allowed to have a fine print surcharge for "Sundays and Public Holidays". Airlines can not offer a seat on a plane for "$5 oneway + Govt. Taxes and Charges" without exposing what the total cost really is in the same advert or document. Restaurants must display the actual total price that will be charged on the particular day.

You might be asking what has this to do with architectural services. Firstly the Act expressly requires GST to be added to the pricing. This is already required by the GST legislation but is now reinforced by the latest amendment to FTA. This requirement seems to be honoured in the breach particularly when submissions are requested for support consultants who seem to be mortally allergic to mentioning GST, as much as Harry Potter and Voldemort's name. It is not acceptable to offer fees "plus GST" without including the GST inclusive fee in the document. Nothing in either legislation outlaws the exposure of the GST component for the information of the client.

The other sting in the tail is that where pricing is offered for various components, the total commitment for the whole box and dice must be shown in at least the same font and weight as the individual component pricing.

This seems to indicate that where a series of fixed fee services are offered, the total fee inclusive of GST must be offered to the potential client. Of course the offer of fixed fees should be carefully tied to a defined scope of works including a budget range. How to deal with the cherry picking of services out of a fee proposal is problematic and an additional confirmation fee offer just listing the selected services may satisfy the legislation. It would also serve you well as it would confirm with the client the services they have foolishly decided they can do without and therefore you have no obligation to provide. Better still it leaves you open to ask the client to

provide the results of the services they have decided to provide themselves for you to continue the services they have commissioned and for additional fees if they extend the services to include those previously forgone.

Percentage Fees and Hourly Rates could be even more problematic. Firstly dealing with percentage fees, one method could be to provide a dollar fee example based on a well considered budget range. Totalling the minimums and maximums will provide the best information available at the time. A consequential advantage of this is that you have limited your fees to a particular budget range and, if the client amends this budget, you have every opportunity to review the quantum of the fees being charged with the client making them fully aware that the total is going to be bigger than initially envisaged.

Hourly fees are generally offered when there is little clarity in the extent of the service required. Some further investigation needs to be done but again it would seem that the best that can be achieved is to provide a "best guess" dollar amount for those services being offered on an hourly rate basis.

The legislation is specifically targeted at goods and services being provided to individuals and not corporate structures, although the principles of ensuring a clear understanding of the commitment that any client is making is always a good one to follow. There are too many cases that have and are wandering through the courts, tribunals, and adjudication systems that are there because the client did not (or found it useful not to) understand the fee agreement. A clear an unequivocal statement from the outset would put an early end to any dispute arising from the fees for the services we provide.

STIMULUS COMMISSIONS & CODE COMPLIANT EMPLOYMENT AGREEMENTS

A number of our members will be engaged in the provision of services for the building being funded through the Federal Government's various stimulus packages. Whilst this work has been welcomed, it has come to our notice that there is some disquiet within the profession regarding the acceptance of practices who have not subjected their employment agreements to scrutiny regarding their compliance with the current employment codes. It may be that the speed with which the packages were rolled out resulted in some ancillary checks not directly involved with the provision of services being neglected.

Members may recall the ACA raised this matter when Workchoices first came in and it became obvious that the crop of awards which were drawn into the net of the Workchoices transition period were not compliant with the legislated minimum National Employment Standards (NES) because they contained clauses that were no longer acceptable to the NES. Individual workplace employment agreements used by businesses were also likely to contain conditions that were now out of step with the NES. To ensure compliance with the code was adopted quickly, the Federal Government of the day (Liberal) required that, in order to benefit from government contracts, employers were required to submit their employment agreement framework and documents for scrutiny to ensure the new code was being implemented.

The situation has not changed with the revision/expansion of the NES by the current Federal (Labor) Government if only because the old non-compliant awards are still in place as the transition period has not finished.

The disquiet mentioned before may translate into the Departments commissioning practices providing services to submit their employment agreements or regime for review even though the commission has already been let. Access to further commissions may be restricted if your agreements or regime are found not to be satisfactory.

Where a practice is responding to a new expression of interest or invitation to tender issued by a Federal Government Department or Agency issued after the 1st August 2009, their employment regime must not only be code compliant but be registered with Fair Work Australia. Until the Modernised Awards commence on 1st January 2010 which will be automatically registered, the only option is to have a practice specific Enterprise Bargaining Agreement that has been submitted and approved for registration. This does not have to be an onerous process but is just an extra hurdle for the next few months and will take at least a month due to the requirement that the staff review period is 21 days.

Unfortunately there is no "one-size-fits-all' answer to resolve the dilemma. It is recommended that, if you are already involved in stimulus package work or are preparing a response to a new tender or EOI, you prepare for the request by having your agreements reviewed by an employment consultant such as the organisation which provides the ACA with consolidated award advice for members, and modified as required, ready for the request to be made.

The good news is that the Modernised Awards ready to commence on 1st. January 2010 are code compliant. The fly in the ointment here is that some transition provisions from conditions in the old awards to those in the new awards where they involve a significant change may still leave particular workers with a non-compliant award until June 2015. This applies to Clerical and Drafting Awards more so that the Architects Award

ARCHITECTS ACT REVIEW

The Discussion Paper is available for download at

http://www.commerce.nsw.gov.au/About+Commerce/Legislation/Review+of+the+Architect%27s+Act.htm

but as a service to our members we have attached a copy with this Communique

As foreshadowed in the last Communique there is just **two weeks left** to make a submission if you are of a mind to do so.

We are aware that the NSWARB has already submitted a paper on matters that they think need adjustment although obviously it has not influenced the Discussion Paper. The ACA encourages architects to raise any matter they have found overbearing, onerous, limiting or restrictive in the operation of the current act for consideration by DSTA in the review. As time is limited before the final document is to be released, it is suggested you make your submissions as succinct as possible to ensure the best possibility of full consideration.

OH&S AND THE RECALCITRANT EMPLOYEE

This little black duck attended an OH&S seminar presented by Workcover and, in response to a question about the employer being held responsible for "accidents", the presenter offered this story in explanation.

An employee continually disabled a safety guard on a metal stamping press. The employer continually repaired the safety switch, counselled the employee regarding the requirements of the job, the need for the switch and even had to deal with the employee dragging in the union on charges of victimisation. The union by the way gave the employee short shrift and disagreed that the employer was victimising the employee.

The inevitable happened and the employee crushed his hand in the press with the safety switch disabled by his own actions.

A court case ensued with the employee presenting his mangled hand as painful evidence at every opportunity and the employer feeling vindicated by the reams of paper detailing the history of warnings, counselling, training and maintenance on the equipment that they had tried everything to avoid the accident.

The judge/magistrate asked of the employer's barrister did they think they had done everything possible to prevent the occurrence (note the language – none of these incidents are ever referred to as accidents). The barrister answered, with justification, in the affirmative. The bench sitter repeated the question with a tone of warning in the voice. Again a "Yes" was offered.

The employer was then informed through the barrister that they had clearly not done everything – they had not fired the individual.

The moral of this story is that in OH&S the first and best action is to eliminate the perceived risk. In this case breaking the combination of that particular employee and that piece of equipment by firing him or moving him to some other task would have eliminated the risk.

The employer was heavily fined for their breach of care.

Finally, apologies for this edition flowing over to 3 pages but there has been a lot happening and it has been difficult to constrain it all to our goal of a maximum of 2 pages in the last 2 editions. It cannot be said it won't happen again but we do try to keep it short and sweet.

Mark Roberts
Executive Officer