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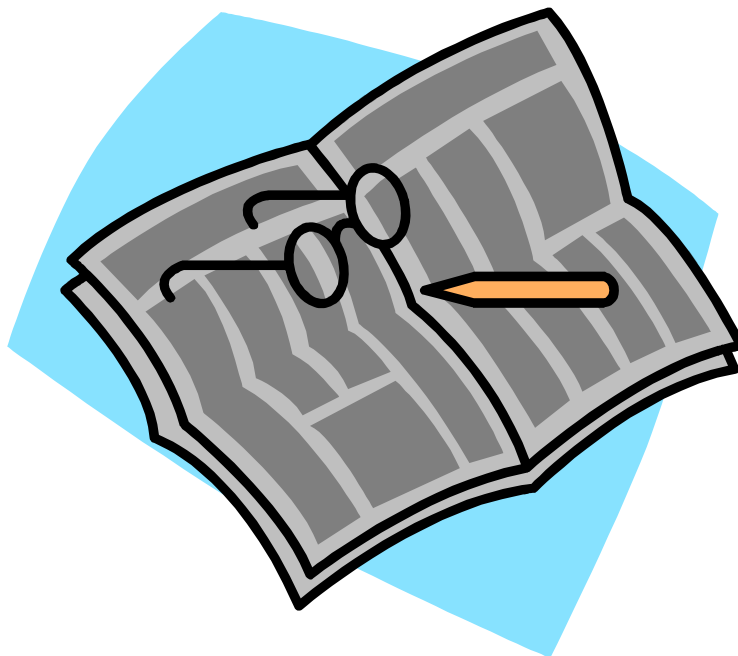
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**Easy HR Newsletter  
July 2005**

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# "Love Thy Neighbour" Not Enforceable In Law

Citizens are under no obligation to rescue strangers in peril, a court has ruled in dismissing an appeal by a man stabbed after being refused sanctuary in a fast-food restaurant. A group of teenagers, fearing attack in the Sydney CBD from a knife wielding gang, sought refuge in a nearby branch of a fast food chain. The store security guard refused access and pushed the group back into the street where one of the teenagers was stabbed multiple times, causing ongoing psychological problems, as well as physical pain, as a result of the attack.

The teenager sought damages against the chain in the NSW District Court, claiming the security guard's negligent or reckless actions led to his injuries. The then 24-year-old lost his claim after Judge James Black found the burger chain did not owe the youth a duty of care. The store security guard who turned him away could not have foreseen the stabbing, the judge said.

An appeal to the NSW Court of Appeal was dismissed, the judges agreeing that no duty of care was breached by ejecting the group from the restaurant.

Justices Ken Handley, David Hodgson said the security guard's first responsibility was towards the restaurant's customers and employees, whose safety may have been threatened if the gang followed the group inside.

Justice Handley said that "a stranger is not obliged to ... rescue those in peril".

"In general the law does not impose legally enforceable duties on one citizen to help another," he said. "The moral commandment to love one's neighbour is not enforceable by law."

## Eyebrow Ring Breached Dress Policy But Dismissal Unfair

The Australian Industrial Relations Commission (AIRC) has ordered the reinstatement of an employee dismissed for wearing an eyebrow ring, notwithstanding that the employer's dress policy specifically prohibited such body piercing. The employee worked as a relief butcher at a supermarket store.

The supermarket's dress policy covering employees working within the meat department stated that:

"Exposed jewellery (including body piercing) is not permitted as this is a potential threat to food safety due to possible physical and microbiological contamination. No visible body piercing is permitted, which includes (visible) tongue piercing, eyebrow, nose, lip etc piercing."

That dress policy also referred to the use of only "approved blue bandaids" for three specified reasons: they were waterproof and reduced the risk of possible food contamination, they protected wounds from contamination by environmental factors, and they could be easily seen if they fell off and ended up in food product."

The commission's conclusion that there was no valid reason for the dismissal essentially depended on a finding that the manager of the store had told the employee, before he commenced employment, that he could wear a blue band-aid over his eyebrow ring while working.

Although the employer denied giving such permission, the AIRC preferred the employee's evidence in that regard.

The AIRC also made the following points in the course of its decision:

- The employee, before he started work, was effectively told he could breach the company's dress policy concerning jewellery and bandaids.
- Any undermining of the objectives of the employer's dress policy, being "maximum hygiene in food handling" and the maintaining of "appropriate dress standards", by the wearing of the eyebrow ring covered by a blue band-aid did not constitute a valid reason for termination.
- The wearing of the eyebrow ring did not constitute any more of a risk to hygiene in food handling than if the employee had worn "one small plain sleeper in each ear" - something specifically permitted by the dress policy.
- The employer's concerns about food hygiene could have been adequately addressed by the employee wearing a "hairnet".
- The court considered the fact that the employee was repeatedly advised (in the two months preceding his dismissal) that he was breaching the dress policy and given a number of opportunities to remove the eyebrow ring, and also warned that his employment was at risk, were not relevant matters given that the employee was told, before commencing employment, that he could wear a blue bandaid over his eyebrow ring.

The employer has appealed the decision and been granted a stay of the order for reinstatement pending that appeal.

*Brown v Woolworths Limited t/a Safeway AIRC (PR958576) 6/6/05.*

## **I Wish I Could Say That...**

- I'll try being nicer if you'll try being smarter.
- I can see your point, but I still think you're full of it.
- I like you. You remind me of when I was young and stupid.
- Whatever kind of look you were going for, you missed.

# Superannuation Super Guru

The Association of Superannuation Funds of Australia has launched a free online super guide for consumers, providing independent advice on issues from annuities to choice of super fund.

For more got to their web site at [www.superannuation.asn.au/guru](http://www.superannuation.asn.au/guru)

## NSW Award Safety Net Increase

On 20 June 2005, the New South Wales Industrial Relations Commission handed down the 2005 State Wage Case decision, granting workers covered by New South Wales private sector awards a \$17 per week wage increase.

The decision was a flow on from the National Wage Case Decision delivered by the Australian Industrial Relations Commission in early June 2005.

Award wages for NSW employees will rise in the coming months as parties to individual awards apply to the Commission to vary monetary rates in line with the \$17 per week increase.

Employers wishing to be informed of changes to pay rates for NSW awards can subscribe to the Office of Industrial Relations Pay Rate Updates and be automatically notified when any pay rate changes take effect.

## 'Workplace Deaths' Bill Now Law

On 5 May 2005 the NSW Minister for Commerce, Hon John Della Bosca, released the Occupational Health and Safety Amendment (Workplace Deaths) Bill 2005 for consultation. The Act (No 34 of 2005) was assented to on 15 June 2005 and is now the law in NSW.

Under the Act, a person's conduct is taken to have caused a death if it substantially contributes to the death. Individuals found guilty of the new offence will face massive fines and possible imprisonment. This bill extends the primary duty of care to directors and managers of corporations.

All employees owe duties to take reasonable care for the safety of people at work and to cooperate with their employer's safety requirements. It appears that under the Act **all** employees will be potentially liable if their "**reckless**" conduct causes a workplace death.

Fines of up to \$165,000 and/or imprisonment for up to five years can be imposed on an individual and no distinction is made between first time offenders and repeat offenders. Corporations can face a maximum fine of \$1.65m.

Under the Act only WorkCover inspectors, mines inspectors with the Department of Primary Industry and persons with ministerial consent will be able to bring prosecutions for the workplace death offence. This means unions will not be able to bring prosecution under the workplace death offence.

It must be remembered that only "reckless" conduct can result in conviction. It is anticipated that this requirement will exclude most conduct by employees and employers from prosecution, even if death occurs, as most conduct will not fall within the meaning of "reckless".

It is unlikely therefore, that the changes will lead to a rush of prosecutions or convictions. Prosecutors will need to prove a breach of the legislation to criminal standards, that is beyond reasonable doubt.

In releasing the Bill the minister said:

*"I can reassure the vast majority of employers, who I know are hard-working and responsible, that they have nothing to fear from this Bill. It is only the minority — the rogues — who should be worried."*

## Alternative Meanings

The Washington Post publishes a yearly contest in which readers are asked to invent alternate meanings for various words. The following were some of this year's winning entries:

- *Coffee* (n.), a person who is coughed upon.
- *Flabbergasted* (adj.) appalled over how much weight you have gained.
- *Lymph* (v.), to walk with a lisp.
- *Flatulence* (n.) the emergency vehicle that picks you up after you have been run over by a steamroller.
- *Testicle* (n.), a humorous question on an exam.
- *Pokemon* (n), A Jamaican proctologist.

## Balancing Children And Work, A New Study

A report "Growing Up in Australia" was recently launched by Senator Patterson in Melbourne.

The report was based on a nationwide survey, of parents of about 5,000 infants aged under 12 months and 5,000 children aged four to five years.

The research found that 70 per cent of the parents feel that working makes them more competent and 49 per cent feel it has a positive impact on their children. No distinction was made in the study between single parents and partnered parents, or between mothers and fathers.

Another 37 per cent feel that working has neither a positive nor a negative effect on children, and most parents do not think family time is less enjoyable because of work.

However, up to 40 per cent of parents would like to work fewer hours than they do now.

The study found more than 20 per cent of mothers were working by their time their child was six months old, but 40 per cent of single mothers of children aged four and five were not employed.

The Growing Up In Australia study will follow the progress of the two groups of children over nine years. Professor Alan Hayes, director of the Australian Institute of Family Studies, said it was the first study of its size and scope in Australia

## Three A's Pool Resources To Produce A New Guide.

The three A's of Australian business, - ASIC, APRA and the ATO have combined to produce a 40 page publication on super choice.

The guide, entitled *Choice of funds: meeting your obligations*, is aimed at employers, trustees, financial advisers and tax practitioners.

A copy of the guide can be found on the ASIC website at <http://www.asic.gov.au>.

## So You Can Judge A Book By Its Cover, .... If It Is Political!

Another myth has been debunked, by Alexander Todorov, a psychologist at Princeton University in the USA. In research of 800 subjects, they tried to establish if there was any correlation between perceived impression of the person being competent and their success at the ballot box.

The impression was entirely based on their facial appearance after a one second exposure to two Black and White photographs of the candidates. Anyone who actually recognized the politician was disqualified.

Todorov said that they tried to measure the impressions of traits such as honesty, conscientiousness, likeability and of course attractiveness. None of this made a big difference. The actual predictor of the election was "competence."

The study found that since 2000 the House and Senate candidates who looked more competent to the surveyed group, actually won 70% of the election they had contested.

Todorov says he was worried he'd have to disqualify a lot of people from his study because they'd recognize a politician's face. After all, his volunteers were students at Princeton University in New Jersey. As it turned out, Todorov says, recognition wasn't a problem.

# Extending The Time To Bring Claims To 40 Years

The New South Wales Supreme Court recently ruled that an ex-sailor who witnessed the Voyager disaster in 1964, had the right to bring a claim against the Commonwealth after he maintained that the incident caused an anxiety disorder from which he suffered.

The sailor had symptoms that included alcoholism, paranoid fear of workplace safety and outbursts of violence and anger. These symptoms were not immediately apparent to the worker but became so over the course of his life. Moreover, the worker claimed he was unaware that these symptoms were related to the collision in any way until he visited a psychiatrist who made the connection.

The court held that the worker was not previously in a position to bring any action because he had not made the connection between his symptoms (which a psychiatrist diagnosed as general anxiety disorder) and being present at the accident (*Fullarton v Commonwealth [2005] NSWSC 444 (2 June 2005)*).

In 2004, another matter concerning the Voyager disaster went before the NSW Supreme Court (*Stankowski v Commonwealth of Australia [2004] NSWSC 198*). On that occasion, an ex-sailor claimed he was now suffering from post-traumatic stress disorder after witnessing the event.

The Commonwealth admitted its negligence in relation to the Voyager disaster and did not dispute that intervening events may have caused or contributed to the worker's condition. Instead, it disputed that the worker had any injury at all. When the NSW Supreme Court found that he did, it awarded the worker damages of almost \$380,000.

*Will your companies record keeping of mishaps hold up for this length of time? Why not try our "Incident Manager" software - <http://www.incidentmanager.com.au>*

## Quotations With Attitude

- If you don't want to work, you have to work to earn enough money so that you don't have to work.

*Ogden Nash*

- If all economists were laid end to end, they would not reach a conclusion.

*G.B.Shaw*

- He has every attribute of a dog, except loyalty

*Senator Thomas P Gore*

## Oops

*A man at Dallas-Fort Worth Airport damaged a window and caused panic among passengers when he accidentally fired his hunting rifle at a security checkpoint. The gun went off while he was demonstrating to guards that it wasn't loaded.*

# Good Accidents, Or Just Good Luck?

*In 1854 a devastating silkworm epidemic struck the silk industry in France, wiping it out, and in 1865 the renowned French scientist Louis Pasteur was asked to study the disease. One of his assistants, a young chemist named Hilaire de Chardonnet, became convinced that France needed some kind of artificial substitute for silk. Unfortunately, he had no idea how to find one.*

*In 1878 Chardonnet was working in a darkroom with some photographic plates when he knocked over a bottle of a photographic chemical called collodion (cellulose nitrate). He didn't bother to clean it up right away, and by the time he got around to it, much of the spill had evaporated. What was left? A sticky mess that produced "long, thin strands of fiber" as he wiped it up. The strands reminded him so much of silk fibers that he spent the next six years experimenting with the substance. Finally he invented what he called "artificial silk."*

*In 1924 the name was changed to Rayon. It was the first commercially viable synthetic fiber, and paved the way for the entire synthetics industry.*

## Law Firm Staff Given The Boot !

Members of the staff of the law firm Gaddens, in Sydney, have recently been given a bonus of a \$400 pair of boots or shoes. Michael Bradley, managing partner of Gaddens Lawyers in Sydney said that he gave the staff an end of year bonus because he believed that "everyone should have a pair of expensive shoes".

It was reported that the women in the office were particularly pleased when he made the announcement. "The screams were so loud you would have thought that Robbie Williams had entered the room".

The offer was for one pair only, and for personal use only with no cash refunds. Staff wishing to buy shoes for partners or children would find that the \$400 refund would not cover these purchases.

This offer was made to staff at the Sydney office only, as offices around the country are managed separately.

## The Naked Interview

An executive in Glasgow recently was convicted after stripping naked to interview a 25-year-old woman.

Saeed Akbar, 35, said at first that it was part of his "tough interviewing technique" but later admitted that he was bored and wanted a "cheap thrill".

He asked the woman, who was applying for a translator's job, if she minded if they took their clothes off. When she refused, he left the room for a few minutes and returned naked, carrying only a clipboard.

He got dressed again when she objected to his behaviour and tried to resume the interview. The woman fled the office and reported him to the police.

Akbar, a father of one, escaped jail after the city's sheriff court heard that the incident had had a catastrophic effect on his life.

Sheriff Brian Lockhart said he had been sacked, his girlfriend had left him and his friends had deserted him.

Akbar, had pleaded guilty at an earlier hearing to breach of the peace and was put on probation for three years. He was also placed on the sex offenders register.

Nudity seems to be a recurring feature of English news. A hiker recently completed a walk from John-o-groats to Lands End, totally nude, except for a back pack and shoes. His comment was that he should have been able to complete the journey in a much shorter time, except for the delays caused by his frequent brushes with the law.

Across the channel, things nude, are also hitting the headlines. In the Spanish town of Pamplona, activists are suggesting a nude run through the city in place of the bull run where both participants and bulls are hurt, the runners by accident and the bulls by design. They claim that running nude will give the same adrenaline rush and will draw as many American and Australian tourists.

## **When Last Was Your Company IT Policy Reviewed?**

In the last year or so, there have been dramatic changes in external data storage devices, and their cost has decreased, equally dramatically. For under \$100 you can buy an USB memory stick that holds 128meg of data. For considerably less you can buy an USB adaptor that allows the connection of any digital camera data recording stick or one can even use an Ipod or similar music recording device.

These devices, when connected to a company network, can become a portal of disaster. Many spam filters and fire walls are designed to protect the system from external attack, usually via the internet. Bringing in data from home by using these devices can introduce viruses that are not immediately detected. Pirated software can also be introduced, exposing the company to legal action.

Confidential data and customer details can also be maliciously exported for financial gain and for the benefit of a third party.

Finally there is the security risk of the data becoming lost and accidentally falling into the wrong hands when an employee takes the material off site.

It may be worth having the company IT policy reviewed to ensure that these potential 'avenues of disaster' have been covered by the policy.

*We have a free Computer Usage policy on our web site that can be used as the base for adaptation for your corporate policy*

<http://www.easyhr.com.au/utilities/utilities.htm>

# Dismissed For Not Disclosing Medical Condition

The dismissal of an employee for not disclosing an existing medical condition in a pre-employment health assessment form was not harsh, unjust or unreasonable, according to the Australian Industrial Relations Commission (AIRC).

The employee worked as a truck driver for a gold mining company. She had initially been employed on a casual basis but was made a permanent full-time employee after about three months. Shortly thereafter, she sustained an upper back and neck injury while working.

X-rays and an MRI taken shortly after the injury and the medical assessments that followed revealed that the employee had osteoarthritis and degenerative disc disease of her neck.

The employee had completed a pre-employment health assessment form and had responded "No" to the question "Have you had back/neck trouble of any kind?"

While the employee was undergoing treatment with a view to being rehabilitated as a truck driver, her employment was terminated. The reason given at that time was that she had not disclosed her pre-employment back and neck pain history.

The employee did not dispute that she could no longer perform truck-driving duties due to her degenerative back condition.

The issues that arose in the case were whether the employee had falsely and knowingly filled out the health assessment form and whether the termination was harsh, unjust or unreasonable given that the employee asserted that she could perform other duties.

The employee maintained that she had honestly and truthfully filled out the form as she did not know that she had a degenerative condition. However, the AIRC concluded that as the employee had previously experienced pain requiring medical assessment (she had x-rays on her back and neck done on three previous occasions), she should have recalled and disclosed that fact on her pre-employment health assessment.

The AIRC also found that although the employee was, following her injury, transferred at her request to work in the blast crew, that transfer was only temporary.

Further, it was reasonable for the employer to conclude that many of the tasks that crew had to perform were unsuitable for someone with a degenerative spine and neck condition, and she could not be allowed to continue with that work on health and safety grounds.

As the employee could no longer perform the duties of a truck driver, and as there were no other positions in which to employ her, the employer had a valid reason to terminate her employment.

*Wratt v Kalgoorlie Consolidated Gold Mines Pty Ltd* AIRC (PR958682) 7/6/05.

## Airport Security

*Several security screeners at Denver International Airport were reprimanded in 2004 after they sent themselves through the X-ray machine "to see what their brains looked like."*

# Is It As Difficult In Australia ?

Smaller businesses in the UK are struggling to cope with the ever-increasing challenges of managing employees, according to a survey released recently by the Institute of Directors.

The 'Small Business Recruitment and Retention Survey' found that 64 per cent of businesses were reticent to give up HR control. Despite this, 88 per cent admitted that finding the right staff was a challenge and keeping up with legislative changes in the workplace was often difficult.

The 'Small Business Recruitment and Retention' survey, conducted in April 2005, examined the pressures, and problems faced by smaller businesses when undertaking their own HR procedures. The survey found that 55 per cent of MDs were acting as makeshift HR directors and struggling to manage the HR burden of those employed by small businesses in the UK.

The key findings were:

- In 55 per cent of businesses, MDs are managing the HR process directly, spending up to one day per week resolving HR issues
- 67 per cent cite 'keeping staff happy' as their number one HR priority with 53 per cent finding this the hardest part of the job.
- Diminishing employee loyalty is considered a major problem by 60 per cent of respondents
- 1 in 5 admitted that they don't invest enough money in managing the HR process.

To obtain a copy of the full report go to [www.iod.com/presoffice](http://www.iod.com/presoffice)

## Rule changes to reduce stress related claims

The federal government are reported to be working on legal reform that would toughen a key test used in workers compensation claims for psychological injury, as fears grow about the soaring incidence and cost of job related stress.

Workplace Relations Minister Kevin Andrews is looking at toughening the definition of diseases in key legislation and wants to help avert a blow-out in psychological claims, which account for just 7% of workers compensation claims, but 27% of total costs.

Research by the Australian Chamber of Industries (ACCI) found that private sector stress related claims increased by 78% in the six years to 2002/03

# Presentation pitfalls using PowerPoint.

It is now common for business presentations to be enhanced with appropriate visual aids, especially computer aids such as PowerPoint. For every presenter who skillfully improves their presentation by using visual aids, another 10 become more dull, boring and a menace to their colleagues or clients.

Here are some of the secrets, not known by many, that are required to enhance, rather than detract from the presentation.

- Eye contact with the audience does not become redundant just because there is something showing on a screen. Address and look at your audience - they are the people sitting in front of the screen - and don't deliver your talk to the screen.
- You are the presenter, not the screen. The ideas, concepts or products you are promoting are yours. You want your audience's attention and you want to build up credibility in your ideas or products and not in your ability to produce gimmicks.
- Use the 'reveal' technique appropriately especially with bullet points. By revealing more than one idea at a time for the audience can be encouraged to read ahead, skipping the current point.
- Every visual aid must have a reason for being there. Look critically and if the reason is not obvious, delete it from the presentation.
- Everyone likes a bit of fun and entertainment. Include 'entertaining' material only if there is a mainstream reason for it to be there, not just for the purpose of humour or entertainment.
- Stand clear of the images. Make sure that you are not positioned between the audience and the visual aid. This is especially relevant to those members of the audience sitting on the sides.
- Complex ideas and concepts can be supported by a hand-out that the audience can take away with them - other than a hard copy of the presentation.
- Don't limit yourself to computer-driven visual aids. Remember the old cliché "variety is the spice of life?" Challenge yourself by adding both spice and life with a bit of variety.
- End with a clear call to action. What was it that the presentation was trying to promote and what action are you expecting from your audience.

## Proverbs to live by

- Newton was wrong. The world sucks.
- Streakers beware! You end is in sight.
- Only the mediocre are always at their best.
- If all you have is a hammer, everything looks like a nail.

# Murphy's Law

*In 1949, the U.S. Air Force conducted a series of tests on the effect of rapid deceleration on pilots, so they could get a better understanding of how much force people's bodies can tolerate in a plane crash. The tests, part of what was known as Project MX981 consisted of strapping volunteers into a rocket-propelled sled, accelerating the sled, and then slamming on the brakes--bringing the sled to a very abrupt stop. The volunteers wore a special harness fitted with 16 sensors that measured the acceleration, or G-forces, on different parts of their body.*

*The harness was the invention of an Air Force captain named Edward A. Murphy, but the 16 individual sensors were installed by someone else.*

*On the day of the fateful test, a volunteer named John Paul Stapp was strapped into the sled and the rockets were fired. The test went off as expected--the sled accelerated to a high speed and then abruptly braked to a stop, subjecting his body to such enormous forces that, according to one account, when he stumbled off the sled, his eyes were bloodshot and his nose was bleeding.*

*Stapp's body is believed to have endured forces equivalent to 40 Gs, or 40 times the force of gravity. But no one will ever know for sure, because all 16 of the sensors failed, each one giving a zero reading for the test.*

*When Murphy had examined the harness to see what had gone wrong, he discovered that the technician who had installed the sensors had wired every single one of them backward. Because of a simple human error, Stapp's life had been put at risk in vain.*

*There are varying accounts of what Murphy said next--he may have cursed out the technician responsible for the mistake, saying "If there is any way to do it wrong, he'll find it." Whatever he said originally, at a press conference a few days later Stapp quoted him as having said, "If there are two or more ways to do something and one of those results in a catastrophe, then someone will do it that way."*

*Within months, this expression became known throughout the aerospace industry as "Murphy's Law."*

## When Does 53 Equal 52?

Occasionally in your cycle of weekly or fortnightly pays, you may have a financial year that has 53 weeks or 27 fortnights instead of the "standard" 52 and 26 pays assumed in the rates in the PAYG Withholding Tax Tables.

When this happens, there will be a shortfall in the PAYG withheld from employees' wages over the year.

At the beginning of the financial years where this happens, employees should be made aware of the potential shortfall as they may wish to voluntarily increase the tax taken from their pay each week or fortnight instead of receiving a bill from the ATO after they do their tax return (they make this voluntary increase by way of an Upwards Variation which is part of the Withholding Declaration form).

The following tables should be used when deciding how much extra tax to withhold for the year.

**Where there are 53 weekly pays in a financial year (2005/2006)**

<b>Weekly Earnings</b>	<b>Additional Tax Withholding Per Pay</b>
\$420 to \$1,199	\$1.00
\$1,200 to \$1,799	\$4.00
\$1,800 and over	\$5.00

**Where there are 27 fortnightly pays in a financial year (2005/2006)**

<b>Fortnightly Earnings</b>	<b>Additional Tax Withholding Per Pay</b>
\$840 to \$2,399	\$5.00
\$2,400 to \$3,599	\$16.00
\$3,6700 and over	\$22.00

**--oOo--**