



# **Churches of Christ in SA & NT Employment Handbook**

**A handbook to assist churches  
who employ ministers and  
other ministry workers**



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## Introduction

We are delighted to present to you this updated **Employment Handbook**. We have made some updates in a number of important areas, including adding a new section to provide some helpful employment principles for churches who employ ministry and other workers in addition to a minister (and hence the change of title to “Employment Handbook”).

The Ministers’ Salaries Advisory Committee has the responsibility of proposing to State Board regarding the terms and conditions for ministry in Churches of Christ in SA and NT. This includes recommendations about remuneration levels.

In making recommendations about remuneration levels, the Committee holds in tension the need to provide a fair and equitable package for ministers, and the ability of the churches to fund it. As such, this handbook should be read in conjunction with the most recent Salary and Allowance Recommendations Issued by State Board. The recommendations should be viewed as a good **minimum** level of remuneration.

### The Need for Compliance

It must be remembered that church boards have serious responsibilities in employing ministers and staff, and as such these responsibilities must be clearly understood and complied with. In particular, the requirements to comply with the Fair Work Act and associated regulations, the Work Health and Safety regime, Australian Taxation Office requirements, ReturnToWork SA provisions, and so forth. On occasion, there are significant consequences which have been experienced by Churches where non-compliance has resulted in considerable financial burdens and penalties. As such, **these responsibilities are non-negotiable**, and must be understood and complied with by Church Boards and Leadership.

### In Conclusion

Churches and ministers are encouraged to consider the particular needs and circumstances of each party in their negotiations so that they may form the best possible partnership for the proclamation of the gospel and the service of God. Remember that every ministry setting is unique, and naturally this may be reflected in the respective discussions between the church and the minister.

If there is any doubt as to the interpretation and application of this Handbook, we would be delighted to assist you. We would like to humbly acknowledge and thank Churches of Christ in Queensland for allowing us to share in their knowledge and expertise in these areas.

Yours in His service,

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## Summary

The content of this Handbook continues to be shaped in reference to similar handbooks maintained by Churches of Christ Conferences across Australia, and therefore helps us to ensure we collectively maintain current recommendations for churches, which takes into account:

- input and suggestions from ministers, churches, and other relevant parties,
- advice from various government agencies,
- legislative and common law developments,
- various positions on employment matters taken by interstate Conferences of Churches of Christ, and
- Compliance investigations conducted by the Fair Work Ombudsman, as well as the ATO.

### Some Key Factors to Note:

- It may be that churches and ministers seek further professional advice on remuneration issues if legal opinion is desired. This handbook should not be seen as legal advice, nor should it supplant specific professional (legal, tax agent, etc.) advice.
- That this document is written from the organisational viewpoint of a church and its respective minister – at times in the document, instead of referencing an ‘employer’ and ‘employee’, the contextual terms of ‘church’ and ‘minister’ are used (for example, ‘the employer shall pay the employee’ is described as ‘the church shall pay the minister’).

This does not mean that this document only applies to churches and those designated as ‘ministers’ per se. A number of entities that are not churches employ people in a ministry function, and ministers do not necessarily have to be termed ‘ministers’ to be performing in that function (an example of both of these situations would be a local community youth service that employs a chaplain). So in the context of the recommendations herein the terms of ‘church’ and ‘minister’ should be interpreted as being fungible (interchangeable) with your specific employment setting where appropriate.

- Please note that these guidelines apply to persons deemed as a ‘Religious Practitioner’ as defined in the FBTAA<sup>1</sup> to mean:
  - a minister of religion,
  - a student at an institution who is undertaking a course of instruction in the duties of a minister of religion,
  - a full-time member of a religious order, or
  - a student at a college conducted solely for training persons to become members of religious orders.

### The Importance of Taxation Ruling TR 92/17 – Who Is A Minister?

In determining whether a person is a minister of religion, many, if not all, of the following characteristics should be present:

- (a) the person is a member of a religious institution,
- (b) the person is recognised officially by ordination or other admission or commissioning, or, where the particular religion does not require a minister to be formally ordained, the person is authorised to carry out the duties of a minister based on a specified level of theological or other relevant training or experience,
- (c) the person is recognised officially as having authority in matters of doctrine or religious practice,

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<sup>1</sup> Fringe Benefits Tax Assessment Act, Subsection 136(1)

- (d) the person's position is distinct from that of the ordinary adherents of the religion,
- (e) the person has acknowledged leadership in the spiritual affairs of the religious institution,
- (f) the person is authorised to discharge the duties of a minister or spiritual leader, including the conduct of religious worship and other religious ceremonies.

Churches that employ people in roles which do not satisfy the above criteria **should not use** exempt benefit provisions for these roles.

Note also that we have had legal interpretation that the exempt benefit provisions **do not apply to entities endorsed as Public Benevolent Institutions**, which are not seen in the eyes of the ATO as a “religious institution” for tax purposes.

Finally, churches that employ people in roles which do not satisfy the above criteria should seek advice on the appropriate industrial instrument for these positions, such as clerical or administrative positions.

## Key contacts

### Churches of Christ in SA and NT Inc.

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T: 08 8443 7572

PO Box 743, Torrensville Plaza SA 5031

114 Henley Beach Road, Torrensville

[www.churchesofchrist-sa.org.au](http://www.churchesofchrist-sa.org.au)

### Churches of Christ Insurance

E: [lmatheson@cofcinsurance.org.au](mailto:lmatheson@cofcinsurance.org.au)

T: 03 9488 8800

F: 03 9481 8543

[www.cofcinsurance.org.au](http://www.cofcinsurance.org.au)

### Christian Super:

E: [helpdesk@christiansuper.com.au](mailto:helpdesk@christiansuper.com.au)

T: 1300 360 907 (local call cost)

F: 1300 367 828 (local call cost)

Locked Bag 5073 Parramatta NSW 2124

[www.christiansuper.com.au](http://www.christiansuper.com.au)

### Australian Taxation Office - Not-For-Profit Section:

T: 13 28 66

GPO Box 9990 Brisbane QLD 4000

[www.ato.gov.au/nonprofit/](http://www.ato.gov.au/nonprofit/)

### ReturnToWorkSA:

E: [info@rtwsa.com](mailto:info@rtwsa.com)

T: 13 18 55 (local call cost)

[www.rtwsa.com](http://www.rtwsa.com)

### Fair Work Ombudsman: (Federal Government)

T: 13 13 94

[www.fairwork.gov.au](http://www.fairwork.gov.au)

### Fair Work Commission: (Federal Government)

T: 1300 799 675

[www.fwc.com.au](http://www.fwc.com.au)

## Section 1 – Employment Terms

Terms of employment for a minister should be agreed upon by the church and the minister as part of the appointment process, and a **'Ministry Employment Agreement'** confirming the arrangements should be signed by the church and the minister prior to the commencement of employment. In these agreements care should be taken to mutually set out the intended responsibilities which the minister is to undertake and the authorities which they will have in the exercise of those responsibilities. Ministers should receive from the church a copy of a signed Ministry Employment Agreement along with the respective job outcome statement.

**A new Ministry Agreement template has been designed by the State Ministry Team. We would commend this to you as an important point of reference.**

The following discussion covers recommended minimum inclusions/guidelines in relation to employment terms offered to prospective ministers.

### 1.2 Fair Work Information Statement

The 'Fair Work Information Statement' is a simple two-page document; published by the Federal Government, which outlines an employee's basic rights under law (a link to the Statement is included in the appendices of this document). Under Federal law any minister who is employed on or after 1 January 2010 must be given a copy of this statement by their church.

### 1.3 Ministry Term

There is considerable variation throughout local Churches of Christ across Australia in relation to ministry appointment terms; although a three to five year term with the option of extensions is common. Anecdotal evidence tends to indicate that longer term ministries may be more effective than shorter term ministries (the exception is an Intentional Interim Ministry) and on that basis an initial five-year term (with the first year being a probationary period) is a good starting point. The key point being the term of appointment must be articulated and agreed in the Ministry Employment Agreement.

### 1.4 Code of Conduct and Compliance

People commended for ministry with the Churches of Christ in SA and NT must be familiar with, abide by, and sign a Statement of Compliance with the *Code of Ethics: Professional and Ethical Standards Applicable to People in Ministry in Churches of Christ*. Information about the Code is available from State Office. Churches are **required** to ensure that the Code of Conduct, and the accompanying statement of compliance, is drawn to the attention of potential ministerial appointees.

It is a non-negotiable condition of employment and Churches of Christ in SA and NT policy that all ministers must hold a current police clearance throughout the entire term of their ministry appointment. Failure to do so will result in the immediate termination of the minister's employment. Further improvements with respect to the management of compliance will be communicated by Ministry Work Group from time to time, which will be considered as binding on churches and ministerial appointments.

### 1.5 Part-time employment

Churches employing a minister on a part-time basis should note that our remuneration recommendations are based on a 38-hour week. Therefore, the package for a part-time minister should be calculated pro rata on that basis. For example, a minister employed for one day (7.6 hours) per week should receive 1/5<sup>th</sup> of the full-time remuneration recommendations plus other pro rata benefits where applicable (such as pro rata calculated employer provided superannuation, long service leave, etc.).

## 1.6 Husband and Wife Joint Ministries

In the context of modern day society, joint ministry situations are becoming more and more common. Such a situation may include both husband and wife as joint ministers, or one as a minister and the other as a church administration assistant, etc.

Remuneration for joint ministries should be negotiated prior to appointment, with payment to be based on the agreed number of hours to be worked by each spouse. During negotiations with the church at the commencement of the ministry, the respective proportions of each individual salary package should be resolved. Note these decisions should be minuted in the records of the church and advised to each spouse in writing in order to satisfy requirements of the Australian Taxation Office.

As is the case with any 'team based' ministry, it is critically important that a separate job outcome statement be prepared for each spouse so that there can be no misunderstandings as to the specific outcomes required of each position.

Where the husband and wife joint ministry will job share one position, it is recommended that employment terms provide for the spouse to be automatically terminated when their partner resigns or is terminated.

## 1.7 Hours of Work/Time off

For many people a 'working week' is five days. In a ministry situation there can be no hard and fast rules, therefore care needs to be taken when an appointment is made to acknowledge the need for a minister to have appropriate days off. The congregation should be made aware of, and encouraged to respect, the minister's days off. Where an agreed day off falls on a public holiday, an alternate day should be arranged. Similarly, when a minister works on a public holiday, an alternate day off should be arranged.

How many hours is a minister expected to work? This is always a hard issue to quantify, and experience demonstrates that many of our ministers work long (and often unacknowledged) hours in the service of their church.

Anecdotal evidence tends to indicate that the average church adherent works 38+ hours per week (38 hours is the legal maximum that most full time employees would be required to work), and, in addition, generally undertakes around five voluntary hours per week as a service to the Lord. This is a good guideline for ministers who should be expected to be employed for 38 hours per week, and encouraged to contribute to church life through additional hours as per above. Ministers should be discouraged from excessive time spent on ministry matters and from being out more than three nights per week in a 'ministry' capacity.

It is reasonable for the minister to utilise flexibility in working hours in regard for 'out of normal' duties (for example, work on evenings, Sundays, the 'on call' nature of most pastoral positions, etc.). This 'flexible approach' to working hours is further supported by the Government's 'National Employment Standards' (NES). Broadly, the NES requires employers to give 'fair and equitable' consideration for an employee's request for flexible work hours (especially where the care of children not yet of school age is concerned). *A link to the Fair Work Ombudsman's Fact Sheet on the NES is provided at the end of this document.*

## 1.8 Professional Development

Ministers should be provided with five days per year of paid leave to increase their skills and knowledge. Please note: In discussions with Conference’s insurers, they have informed us that ministers who do not undergo regular professional development are an increased insurance and liability risk; and in the case of a local church it is the local church board’s obligation to minimise potential risk and litigation liability. Churches need to build into their own budgeting and oversight structure appropriate accountability and funding support to ensure ministers partake in professional development.

## 1.9 Ministry Review, Evaluation and Renewal

It is strongly recommended that churches undertake a review/evaluation of their minister every second year and that this program of review/evaluation should be included in the Ministry Employment Agreement. Both church and minister will derive value from such a process and effective performance appraisal can help prevent misunderstandings in roles and responsibilities. Identification of any dissatisfactions or unmet expectations before they become problems is clearly desirable. In addition, continuing personal and professional development is important for effective ministry, and the formulation of a development plan should be part of any review process.

It is also strongly recommended that any process of review and evaluation be facilitated by a trained representative of the Ministry Work Group. The Ministry Work Group utilises a review process, based on the principles of a 360 degree review, which evaluates ministry effectiveness against a set of objective benchmarks. This review will identify areas of strength and deficit and highlight significant trends. It is important to recognise that this material is designed primarily as a tool to stimulate discussion and not as an end in itself. Conversation with Ministry Work Group facilitators, between minister and church leaders, between minister and colleagues, and between church leaders and congregation will also be important components of any review.

If the review/evaluation falls in the penultimate year of a ministry term, then that review/evaluation requires a specific focus on the question of whether a renewal of the ministry term is appropriate.

Generally a ministry review process will focus on three major aspects:

### (a) Role Description

The tasks, responsibilities and priorities outlined in the role description should be reviewed at least annually. Discussion should canvass whether the priorities are still relevant, whether all tasks are still required, whether some necessary functions have been overlooked, and whether the role description is formulated in a way that helps achieve the major goals of the church.

### (b) Performance Appraisal

A process to evaluate the performance of the minister is an important yet delicate part of ministry review. Parameters and indicators for measuring performance should be agreed to prior to the review process. Feedback should be sought from a wide sample of “stakeholders” (the congregation, church leaders, the minister, etc.), and factors other than ministry performance that have limited the attainment of goals should be clearly acknowledged. The appraisal process should also invite reflection on areas for further development.

### (c) Development Program

An annual program for personal and/or skills development should be determined by the minister in conjunction with the elders and in the light of the performance appraisal. Further information on the Ministry Review process is available from the State Minister.

## 1.10 Renewal of Ministry Term

The Ministry Work Group and State Board strongly recommend the following process for deciding on the renewal of a Ministry Term:

- All ministries should undergo an independently facilitated 360 degree appraisal/review process late in the second and fourth years of a ministry term. The process in the penultimate year of a term to be intentionally focused on the question of term renewal. This process can be facilitated by a representative of the Ministry Work Group. Please contact the State Office for further information or to arrange a review process.
- Once the pre-term review process has been completed and a report presented to the congregation's leadership and the minister, an indicative ballot of all members and adherents (i.e. all regular participants in the life of the church) should be held, not to decide the term renewal, but to indicate the level of support for such a renewal. Members and adherents should receive, prior to that ballot, a summary of the outcomes and recommendations of the review report.
- Once the outcome of the indicative ballot is received, a conversation between church leadership and minister should be held with an external facilitator, to discern an appropriate response to the outcome of the review and ballot, with regard to the renewal or conclusion of the ministry. This conversation can also be facilitated by a representative of the Ministry Work Group.

## 1.11 Minister's Accommodation

### 1.11.1 Use of Church Manse

The following suggested guidelines cover the provision of a manse by a church.

Prior to appointment, opportunity should be provided for a new minister and their spouse to inspect the manse to be provided. This will allow an opportunity for mutual arrangements regarding repairs, decor, chattels, etc. to be made with the church.

The church is responsible for:

- providing a manse that is clean and in a good state of repair before the minister moves in,
- providing general chattels (for example, floor coverings, blinds, light fittings, etc.),
- providing a manse with a garage (or a carport and garden shed),
- providing effective cooling (or heating) as required,
- ensuring security by supplying and maintaining locks, keys and devices,
- providing a study facility (in either the manse or the church (preferably both)). Where a study is provided in the manse, consideration should be given by the church as to the church covering the expenses of a manse study that are related to ministry work,
- providing regular and prompt maintenance and repair,
- complying with the laws regarding the health and safety of people using or entering the property,
- undertaking a pre-occupancy 'spring clean', and
- providing a telephone (and the church should also cover at minimum the line rental cost and the cost of calls and any applicable internet access associated with ministry work).

The Minister is responsible for:

- general cleaning, household and gardens maintenance,
- the repair of any damage the minister's family or their guests cause to the property, less 'fair wear and tear', and
- allowing church representatives to enter the premises for specific purposes (including inspection, repairs and maintenance).

#### **1.11.2 Minister resides in own home**

A component for housing is usually included in a minister's package where a manse is not provided by the church. The standard salary rates are calculated with this default position in mind. The following additional observations are made:

- the church should consider covering the ministry related expenses of a minister's home study (if they have one), and
- the church should provide the minister with a telephone for use at their home, and the church should also cover at minimum the rental cost and the cost of calls and any applicable internet access associated with ministry work.

#### **1.11.3 Minister's Accommodation – Impact on Salary Package**

The issue of whether the value of a manse should be included in a minister's salary package, and if so what that value should be, is an individual one in each ministry setting that should be agreed upon by both the minister and the church before the Ministry Employment Agreement is ratified by both parties. If the church does not have a manse, and a manse is rented for example, the church and minister should negotiate together in good faith what component would constitute allowance, and what component should be paid by the church. In some cases, it may be most appropriate for the church to pay the full rent, unless the minister has requirements that are out of the ordinary and hence may require some form of cost sharing.

It should be noted that under no circumstance should the manse be valued at anything more than 'fair market rental value'. In the situation where the church and the prospective minister disagree on the 'rental value' attributed to a manse, informal advice from an independent third party should be sought (for example, a local real estate agent), and the church is always encouraged to act in grace when agreeing to a ministry package.

#### **1.11.4 Minister's Accommodation and Ministry Agreement**

As indicated, it is strongly encouraged that both churches and ministers agree in writing to the terms and conditions of the use of the manse including coverage of issues such as any potential use of manse in the period after conclusion of ministry; who is responsible for payments such as water, rates, etc.; what sort of pets are allowed (if any); who is responsible for paying for and organising the steam cleaning of carpets/pest spraying/ etc. and when it is required (if at all).

A helpful reference for churches to define an appropriate tenancy agreement can be found at the SA Government website <https://www.sa.gov.au/topics/housing-property-and-land/housing/renting-and-letting/renting-privately/forms-and-fact-sheets-for-private-rental-tenancies>.

## 1.12 Removal Expenses

Reasonable relocation expenses (which may include furniture removal, meals, fares, petrol costs, etc.) should be met when a minister takes up an appointment. These should be, where possible, paid directly to the contractors/parties involved rather than being reimbursed to the minister.

It is normal practice for at least two to three competitive quotes to be obtained before the most appropriate quote is settled upon by mutual agreement between the church and the minister.

Please note: 'relocation travel' or 'moving in' time is not generally regarded as 'working' time in the context of the minister working for the church, therefore it stands to reason that a minister would generally not be remunerated for same.

## 1.13 Workers' Compensation

There is a legal requirement for each church to maintain a current workers' compensation policy. This can only be obtained through registration with ReturnToWork SA (a state government agency - refer to the 'contacts' page at the beginning of this document for contact information).

To comply with legislation the gross wages figure entered in the Remuneration Return and Reconciliation Statement to ReturnToWork SA should be based upon the total salary package and not just the cash component of the total package.

It is not uncommon for organisations to be subject to audit by ReturnToWork SA and to face heavy penalties for not declaring and paying their premium on the total salary package.

When ReturnToWork SA payments do not completely cover the minister's remuneration in the rare case of a claim upon the policy, then there may be a moral obligation upon the church to consider making up the difference (dependent upon the circumstances of the particular situation).

## 1.14 Provision of Motor Vehicle

The provision of a motor vehicle may form part of the ministry exempt benefits component of a minister's salary package. Unless mutually agreed beforehand, the vehicle should be provided 'without interruption' – for example, during annual leave and other leave absences.

## 1.15 Recommended Remuneration

The State Board makes a separate communication as to the recommended salary packages for ministers, with the assistance of the Ministers' Salary Advisory Committee. Updated salary package recommendations are generally issued annually by State Office with effect from **1 July** each year.

Churches with special ministry needs and enhanced demands are strongly encouraged to recognise and remunerate for these additional demands in the assembly of the respective minister's package.

## 1.16 Payslips

As required under Federal law, with each payment of salary and/or allowances the minister should receive a payslip within 24 hours of a payment being made detailing:

- the church's full legal name and ABN,
- the minister's full name,
- the minister's job title,
- date of payment,
- period of payment (for example, 04/3/14 – 17/3/14),
- the number of hours worked by the minister for the period concerned,
- the minister's wage rate,

- the gross (before tax) and net (after tax) wages paid to the minister,
- details of any deductions made,
- details of any additional payments made to the minister,
- details of any additional payments made to other parties (for example, compulsory super payments made to a super fund on behalf of the minister), and
- year-to-date cumulative totals should also be shown.

A fact sheet on record keeping appears as an appendix in the Guidelines due to increased activity of the Fair Work Ombudsman in this area.

## 1.17 Superannuation

### 1.17.1 Employer Provided Superannuation

Under Federal law the church must pay employer superannuation to an accredited superannuation fund on behalf of the minister (or any other employee for that matter) if the minister is earning at least \$450.00 per **month**. Note, the superannuation guarantee age limit of 70 was removed from 1 July 2013 and employers are required to contribute to eligible employees.

The respective employer superannuation amounts for ministers should be the ‘employer % rate’ times the total salary package.

Therefore, the church should remit the following employer superannuation contributions over and above salary package outgoings to an accredited superannuation fund:

*‘Employer % rate’ X total salary package (TSP) = Total annual employer superannuation contributions.*

For example, in the case of a minister on a TSP of \$64,878.22 = 9.5% x \$64,878.22 = \$71,041.65 per annum.

All employers are required to make superannuation contributions for each quarter in the month following the respective quarter (similar to the quarterly BAS lodgment requirement).

Contributions are therefore due to be paid by the church into an accredited superannuation fund by 28 October, 28 January, 28 April and 28 July of each year.

The superannuation contributions can either be a ‘lump sum’ payment at the respective quarterly due date, or regular payments throughout the quarter (usually as part of the payroll process).

Please note: In the situation where a part-time minister does not earn \$450.00 per **month**, then the church is still encouraged to provide employer superannuation.

When a minister (or any other employee) turns 65, superannuation funds can only accept contributions by the minister if the minister/employee works at least 40 hours in a period of not more than 30 consecutive days in that financial year.

- When a minister (or any other employee) turns 70, superannuation funds can only accept non-member superannuation contributions if they are mandated (compulsory) employer contributions. For example, superannuation contributions paid in accordance with an award.

When a minister (or any other employee) turns 75, superannuation funds can no longer accept personal superannuation contributions.

### 1.17.2 Employee Provided Superannuation

Under Federal law any employee in Australia may choose to contribute an amount from their cash salary to their superannuation fund (this amount would be in addition to the employer contributed amount discussed above). In return for doing this, amounts contributed by the minister are not liable for income taxation, thereby reducing the income taxation due on a minister’s cash salary.

*Example: Jim Smith is employed by the Black Stump Church of Christ as a part-time minister on a Total Salary Package (TSP) of \$64,676 per annum (with the 50/50 MEB exemption also being utilised).*

#### Situation 1: Jim chooses not to make additional superannuation contributions:

Superannuation Guarantee	Per Annum
Total Salary Package April 1 <sup>st</sup> 2014 details	\$64,676.00
Taxable Income 2014 rates	\$21,080.00
Church pays Super Guarantee @ 9.5% on Total Salary Package	\$ 6,144.22
Taxable Income remains at	\$21,080.00

**Situation 2: Jim chooses to make additional superannuation contributions of \$2,000.00 per annum (\$76.92 per fortnight):**

<b>Superannuation Guarantee with Reportable Super Contributions (RESC)</b>	<b>Per Annum</b>
Total Salary Package April 1 <sup>st</sup> 2014 details	\$64,676.00
Taxable Income 2014 rates	\$21,080.00
Church pays Super @ 9.5% on Total Salary Package	\$ 6,144.22
Employee Directed Superannuation Contribution (Reportable Employer Superannuation Contributions <i>(this must be taken from Taxable income-not from Exempt Benefits) and must show on Payment Summary and Payslip.</i> )	\$ 2,000.00
Sent to Superannuation Fund	\$ 8,144.22
Taxable Income	\$19,080.00

It should also be noted that currently the Federal Government has a program in place called ‘Super Co-Contributions’ whereby the government will match employee superannuation contributions up to a certain limit and as per certain guidelines/conditions.

For more information refer: <http://www.ato.gov.au/Individuals/Super/In-detail/Contributions/Super-co-contribution/>.

Please note that as this employee contributed superannuation ‘taxation benefit’ is made available to all Australian taxpayers, and not just ministers per se, then no set opinion is expressed herein as to whether this benefit should be factored into considerations concerning any recommended maximum allowed benefit amounts or not.

Whilst the context of the discussion herein would imply that the utilisation of this ‘salary sacrificing’ benefit may indeed result in the minister technically receiving more than 50 per cent of his total salary package as untaxed benefits. The decision as to whether any ‘community exempt benefits’ (CEB) such as employee superannuation contributions should be included when considering the 50 per cent recommended maximum ‘ministry exempt benefit’ (MEB) levels, is a decision that should be made by the church and the minister in the light of their current ministry context. Further discussion on this matter is included in the ‘exempt benefit’ section later in this document.

### **1.17.3 Additional Notes on Superannuation**

In most cases ministers also have the legal right to select the super fund to which they want their employer and/or employee superannuation paid into. Refer <http://www.ato.gov.au/super/> for more information.

Prior to 2004 the Churches of Christ in Australia operated a superannuation fund for ministers under the auspices of the national agency known as the Churches of Christ Provident Fund. In 2004 this superannuation fund was transferred completely to a separate commercial superannuation fund known as ‘Christian Super’ (contact details provided at the beginning of this document). Therefore inquiries in relation to any ‘old Provident Fund superannuation accounts’ should be made directly to Christian Super and not to the Ministers and Employees Benefits Scheme.

## 1.18 Annual Leave

**Five weeks** of paid annual recreation leave per year pro rata should be provided. Accurate records must be kept of leave accumulations and usage. A sample 'Leave Record Form' is available from State Office.

The practice of allowing leave to accumulate from year to year is undesirable for both the church and the minister and should be avoided.

**It is also an important point to remember that the provision of adequate leave for a Minister is an important duty of care that the church board carries.**

The Ministry Exempt Benefit component of a salary package should continue to be paid during all periods of leave, as the calculations for same are based on a 52-week year. Annual leave should be paid with a 17.5 per cent leave loading on the Salary component only irrespective of when the leave is taken (and the loading is calculated).

## 1.19 Long Service Leave

Long Service Leave is an entitlement that provides for additional leave to long-serving workers. The Church, as an employer under the Long Service Leave Act 1987 (SA) is accountable for ensuring the provision of Long Service Leave for the minister, and any other employees. In South Australia, most employees are entitled to 13 weeks leave upon the completion of 10 years' service with an employer, or related employers<sup>2</sup>. An employee can also be eligible for a pro rata entitlement after 7 years of service.

We would encourage the church to utilise the Churches of Christ Ministers and Employees Benefits Scheme ([www.cofcaustralia.org/mebs/](http://www.cofcaustralia.org/mebs/)) each year for full, part-time and casual ministry staff, as a means for providing for this long service leave obligation.

Contributions to the scheme are based on 1.3 times the weekly salary, are normally paid annually by 31 March each year, or on a more frequent basis by arrangement. Payment may be deferred until 1 September if so desired but in this case the amount payable becomes 1.4 times the weekly salary.

Calculations should be based on the total amount of the weekly salary package (including the MEB component and Superannuation component). Where a manse is not provided, the minister still has the responsibility for providing their home (mortgage payments, rates etc.) during periods of leave. Where a manse is provided it can be argued that a minister taking LSL will still need a house to live in and thus the 'notional value' component should be included in the LSL contribution (irrespective of the minister's present housing situation) as a contingency to cover the possible need to pay for accommodation when LSL is actually taken.

Summarised below are additional points in relation to LSL which are included here on an informal basis, so if or when churches or ministers alike are seeking to clarify time frames and eligibility to LSL, they must contact the Ministers and Employees Benefits Scheme directly (contact details at the beginning of this document) to discuss and confirm the details of any entitlement and/or corresponding time frame and eligibility issues.

- Should a person leave ministry employment (not just a particular church) prior to five years of service a refund may be made by the Ministers and Employees Benefits Scheme to each church which has contributed LSL to the Ministers and Employees Benefits Scheme during the period of ministry. In this case the funds belong to the contributing churches.
- Once an individual has been in ministry employment for more than five years, LSL is deemed by the Ministers and Employees Benefits Scheme to belong to the minister.

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<sup>2</sup> The *Long Service Leave Act 1987* and *Long Service Leave Regulations 2002* regulate long service leave entitlements for most South Australian workers in the private sector. The SafeWork SA [Long Service Leave Entitlements \(PDF 118kb\)](http://www.safework.sa.gov.au/show_page.jsp?id=2477#.VuH0o_I97tS) fact sheet provides more information – refer also to [http://www.safework.sa.gov.au/show\\_page.jsp?id=2477#.VuH0o\\_I97tS](http://www.safework.sa.gov.au/show_page.jsp?id=2477#.VuH0o_I97tS).

This means that subject to church approval and the availability of funds to their credit, the minister may take periods of LSL after five years in ministry employment. Similarly, should the minister leave ministry employment altogether after five years, the Ministers and Employees Benefits Scheme would pay the contribution credit to the minister.

### 1.20 Personal/Carer's Leave

Personal/Carer's leave (PC leave) is available for when the minister is ill (or a member of the minister's immediate family or household requires care from the minister). It is available for up to 10 full pay days per calendar year. PC leave is cumulative from one year to the next, but is not portable from one church to another.

In a situation where leave is required for family care, and no PC leave is left, then up to two days of unpaid leave is available to the minister per occasion.

**It is essential that records be kept of the accumulation and use of PC leave.** A sample 'PC Leave Record Form' is available from State Office.

Circumstances may occur (such as an accident or prolonged illness) which will necessitate the consideration of extended PC leave. In order to meet this contingency, churches may like to consider sickness and accident insurance cover (available through Churches of Christ Insurance).

Please note: the usage of PC leave does not affect the entitlement to bereavement leave, or vice versa.

### 1.21 Bereavement/Special Leave

Churches should naturally be very supportive of ministry families in times of special circumstances. Bereavement leave is generally provided in the case of the death of a near relative, and is available for up to two full pay days per occasion.

Please Note: bereavement leave is not cumulative from one year to the next, and is not portable from one church to another. This is consistent with the National Employment Standards. The usage of bereavement leave does not affect the entitlement to PC leave, or vice versa.

### 1.22 Parental Leave

The legal position is that female **and male** ministers who have had at least 12 months continuous service are entitled to unpaid parental leave. Leave may be taken from:

- six weeks prior to the baby's due date for pregnant female ministers,
- birth of the baby for male ministers, or
- date of adoption where the child adopted is under five years of age.

Unpaid leave may be taken for up to a year (but in usual circumstances cannot extend beyond one year after the child was born or adopted – refer the National Employment Standards for more information).

For pregnant female ministers suffering from a pregnancy related illness, there are also special maternity leave provisions available under the National Employment Standards (contact State Office for more information).

#### 1.22.1 Paid Parental Leave – Overview of scheme

In the 2009/10 Budget, the Federal Government announced the introduction of a comprehensive Paid Parental Leave ("PPL") scheme for parents who are the primary carers of children born or adopted on or after 1 January 2011. The scheme aims to provide a system of PPL for Australia's working parents, meeting a gap currently in our system or workplace practices, and brings Australia in line with most other OECD countries. The scheme is also a way of supporting parents outside of the social welfare system by recognising that paid parental leave should be treated as a workplace entitlement.

The PPL scheme does not provide an entitlement to leave. PPL is designed to complement existing leave entitlements, for example, the unpaid parental leave provision of the National Employment Standards under the Fair Work Act 2009.

**It is essential that the minister consult the Department of Human Resources for the latest information in this area.** Briefly, the scope of the scheme operates as follows.

### **1.22.2 Parental Leave Pay**

Parental Leave Pay provides eligible working parents (usually birth mothers) with up to 18 weeks pay at the rate of the National Minimum Wage, currently around \$641 per week before tax.

Full-time, part-time, casual, seasonal, contract and self-employed workers may be eligible.

Government-funded Parental Leave Pay is usually provided by employers to long-term employees in their usual pay cycle. Parents who do not receive Parental Leave Pay from their employer or who do not have an employer, will receive the payments directly from Centrelink.

Parents and employers can find out more, including eligibility requirements and how to apply, at the [Australian Government Department of Human Services website](#).

### **1.22.3 Dad and Partner Pay**

Under the Parental Leave Scheme, “Dad and Partner Pay” provides eligible working dads or partners with up to **two weeks' pay** at the rate of the National Minimum Wage (currently around \$641 per week before tax) for children born or adopted from 1st January 2013. Full-time, part-time, casual, seasonal, contract and self-employed workers may be eligible.

Dads or Partners have to be on unpaid leave or not working to receive the payment. The role of employers in “Dad and Partner Pay” is to provide unpaid leave so that their eligible employees can access it. Parents and employers can find out more, including eligibility requirements and how to apply, at the [Australian Government Department of Human Services website](#).

Note that there are some practical limitations of the Federal Government's approach, in that (a) the rate of remuneration is not commensurate with a Minister's package, (b) the number of weeks covered (being 2 weeks) is less than the previous recommended position of Churches of Christ, and (c) to be entitled, the recipient must be on unpaid leave.

For this reason, a Church may decide to take an alternative approach to “Dad and Partner” leave, and revert to the previous leave policy, or indeed come up with a more equitable arrangement based on the circumstances of the Minister and their family. Rather than prescribe this, we would encourage Church Leadership to take a compassionate approach in making decisions of policy in this area.

### **1.22.4 Practical Considerations**

- Leave is to be taken in one continuous period. This leave may be taken at any time during the first 12 months after the date of birth or adoption. If the 12 month cut-off expires before the full amount of paid leave has been taken, the employee forfeits the remaining amount of leave and payment.
- **The minister contacts the Family Assistance Office (FAO) to apply for leave payments.** The Church does not have to contact FAO if approached by a minister, and cannot make contact on behalf of the minister.
- FAO determines eligibility of a minister. If approved, FAO will contact the church who is then required to provide FAO with information about the business and payroll arrangements, as well as
- providing confirmation regarding certain employee details. Scope exists for a church who may not agree with the decision of FAO to review/appeal such decision.

- FAO sends payments to the church (usually EFT) starting just before the date the payment is due to commence. These payments will be accompanied by a payment notice from FAO outlining the minister's name, payment amount, and relevant payment period. PLP can be received from FAO in either nine fortnightly payments, or three payments every six weeks. Where multiple ministers are eligible for PLP, a lump sum will be transferred with electronic notices identifying to whom the payments are to be distributed. It is important to note the church is not required to transfer the payment to the employee if the funds from FAO have not been received.
- The church distributes FAO payments to eligible ministers through normal payroll arrangements. A payslip is still required for these payments.
- The church must notify FAO if an employee returns to work before the full period of Paid Parental Leave has been used, if the minister resigns, (the minister must also inform FAO) or if there is a relevant administrative change to the business (for example, change of payroll arrangements).
- A church can choose to pre-register online through Centrelink Business Online Services. FAO will obtain the same information from the employer and provide notification when an employee makes application.
- Note that there is some ambiguity as to the treatment of Exempt Benefits under this scheme. The impact of this should be assessed case by case, and the principle of "no disadvantage" should apply to the minister.
- From 1 July 2011 the Church will be responsible for providing PLP to eligible ministers.
- However, churches are not required to distribute payments to an eligible minister if the minister has been employed for less than 12 months or in circumstances where the minister is accessing less than eight weeks PLP. These ministers will still receive the payment, but directly from FAO. Notwithstanding this exemption, the church may still choose to distribute payments in both of these circumstances.

### 1.23 Community Service Leave

Where a minister needs to take leave for a 'prescribed community service activity' (for example, jury service, SES callout, other emergency service duties, etc.) then leave should be granted not only for the term of the minister's involvement in the activity, but also where applicable for reasonable travel time and time for rest after the activities.

Community service leave is unpaid leave, except for jury service where an employee is entitled to 'make-up pay' (the difference between normal pay and the remuneration provided by the Department of Justice to the relevant minister). Make up pay is payable by the church to the minister, and only applies for the first 10 days of jury service per trial.

Please note: for many ministers, such 'community service' activity is part and parcel of the job (for example, SES chaplain), and therefore in such situations, and where the involvement is acknowledged by the church leadership as part of the job, naturally such activities would not technically require leave.

### 1.24 Termination

#### 1.24.1 Introduction

There are a number of circumstances that may necessitate the termination of a ministry (and for an important note on 'unfair dismissal laws' see the end of this section). These circumstances include:

- The minister has responded to a call to another ministry position or to some other employment, and agreement has been reached between church and minister to conclude the appointment at the end of the current term.

- The minister, for whatever reason, has exercised the option to give notice under the terms of their Ministry Employment Agreement to conclude ministry prior to completion of the current term.
- Personal circumstances or ill-health make it necessary for the minister to withdraw from ministry.
- The church finds it necessary to terminate the appointment, due to a breach of the respective Ministry Employment Agreement by the minister, or for another serious mitigating factor which is recognised under law as a sufficient reason for termination of employment.
- Recommendation of termination of employment by the Ministry Professional Standards Committee of the Churches of Christ in SA and NT.

#### **1.24.2 Termination Under the Terms of the Ministry Agreement**

When the ministry is concluding at the end of a term or as a result of three months' notice, the process of termination is usually an amicable one. Some aspects to be considered in the process include:

- *Long service leave and superannuation* entitlements should be paid right through until the termination date. If a full year/'period in advance' contribution has been made by the church for either of these entitlements, and the ministry is concluding prior to the period in question, then the church may consider leaving the entire contribution in the minister's entitlement as a sign of its generosity and gratitude.
- *Annual leave* entitlement should be calculated on a pro rata basis for the current year and added to any unused entitlements from previous years. If paid as a 'lump sum', calculations should be based upon the value of the total salary package, and paid in accordance with instructions obtainable from the Australian Tax Office.

Where remuneration has been packaged to take advantage of the Fringe Benefits Tax exemption, it is not recommended or appropriate in the first instance for the balance of any ministry exempt benefit account to be paid to the minister. Rather the balance should be transferred to the minister's next church or employer for deposit in their respective new 'fringe benefit' styled account. If this is not possible, then the account balance may be paid to the minister but it must be treated as a cash payment and taxed accordingly on a 'pay as you go' (PAYG) basis.

#### **1.24.3 Early Retirement from Ministry**

In this situation there may be some emotional stress for both the minister and church. There may also be some practical and financial issues. Such a situation must be handled with a great deal of sensitivity, grace and compassion. The following points are provided for general guidance:

- State Office should be advised immediately of the circumstances. If deemed necessary then confidential counselling and appropriate support can be provided to the minister, church members or church community as appropriate.
- Leave entitlements plus any other accumulated benefits should be paid as a 'lump sum' in accordance with instructions obtainable from the Australian Tax Office.

#### **1.24.4 Termination Outside the Terms of the Ministry Agreement**

Difficulties may arise when there is a need for the church or the minister, to terminate the ministry under circumstances not generally anticipated in the employment agreement, ranging from personal or family needs of the minister, to loss of confidence and trust by the minister in the church (or vice versa), to serious ministerial misconduct, etc. Often, such situations can be resolved amicably. However, sometimes the church and the minister will be in conflict over the need for (or the terms of) termination.

Churches are not immune from action for wrongful dismissal (refer to the discussion at the end of this section on 'unfair dismissal' laws).

There are some circumstances where termination of the ministry may be in the best interests of the church and/or minister. For example:

- Where the terms of employment have been breached by the minister.
- Where the emphasis or direction of the minister is no longer consistent with agreed expectations and priorities of the church.
- Where the minister no longer has the confidence and support of the church leadership.
- Where the minister had been found guilty of a serious breach of the Code of Conduct for Ministering Persons.

In all situations, the following general directives should be followed as the circumstances warrant:

- Any Ministry Employment Agreement should include a process for routine appraisal of a minister's performance. One way in which this might be undertaken is for two or three of the church leaders, who are sensitive to the mind of the congregation, review with the minister all aspects of the minister's performance at agreed intervals (at least annually, but perhaps half-yearly).
- If this process is approached with compassion and prayerful preparation by the parties concerned, it will provide a forum for the recognition of potential difficulties before they become major issues, thus allowing early and positive corrective action to be taken.
- **The importance of this point cannot be over emphasised.** Community standards require that employees have the right to feedback regarding unsatisfactory performance and that they are given the opportunity to correct any deficiency before being subject to any disciplinary action. In the caring environment of a church community this is most certainly also true.
- Where a minister appears incapable or unwilling to address any identified ongoing/collected problems or shortcomings, or where a minister considers that the church's evaluation is unreasonable, a formal meeting should be arranged between the minister, church leaders, and a Church, Ministry and Pastoral Support (State Office) representative (who may be able to act as an independent chairperson for the meeting). The minister should be allowed to have an advocate present. Should the conflict remain unresolved, a move to terminate the ministry may be appropriate. The appraisal must be in alignment with the originally agreed job outcome statement and the Ministry Employment Agreement. If not, the minister may have a case for unfair dismissal.
- It should be remembered that churches and/or their leadership teams may be accused of wrongful dismissal where the minister in question has had no formal written warnings (it is generally expected that in addition to any specific legal requirements for early termination that in most situations three separate written warnings should be given to the minister)<sup>3</sup>
- Unless termination is a result of a serious and/or knowledgeable breach of conduct by the minister, then as far as possible termination should provide for three months' notice, or pay in lieu of notice if the circumstances prevent the minister from continuing in effective ministry for those three months. Pay in lieu would include salary, use of the manse, and other benefits as defined in the employment agreement.

It is usually the case that the leadership must prove that the minister has been incompetent in carrying out his ministry and/or has not achieved stated written goals if not, then the minister could be entitled to be paid out for the remainder of his term).

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<sup>3</sup> Note however that this point may not be applicable in the case of serious misconduct that warrants immediate termination (however as noted elsewhere in this section the church should always receive (and act in accordance with) legal advice if a situation has arisen where such decisions are being countenanced).

Please note: While some circumstances may justify termination without notice or pay in lieu of notice, such instances are rare and could only be envisaged when the minister disqualifies themselves from effective ministry due to their actions and/or conduct. In the event that a minister's behaviour is so unacceptable that instant dismissal is countenanced, then the severance payment terms should be determined on the advice of State Office or PSU.

**Instant termination is difficult under any circumstance. The church should always receive legal advice before any action is taken to terminate an employment contract in a manner that is outside the scope of that contract. The importance of this point cannot be over emphasised.**

#### 1.24.5 A Further Note on 'Unfair Dismissal' Laws

It is important to note that due to the rather unique way that both the previous and current Federal Governments define a 'corporation', the unfair dismissal exemption under the Fair Work Act is not available to any part of the Churches of Christ in SA and NT (churches, agencies, etc.).

So even though most local churches and agencies only employ at most a few people, and would be viewed by the 'man on the street' as a small business type structure for administrative purposes, nonetheless the small business exemption from unfair dismissal laws does not apply in our situation.

### 1.25 Appointment of Employees Other Than Ministers

Whilst the main focus of this handbook is with respect to the appointment of ministers, it is important that appropriate measures are addressed in the employment of other church and ministry workers, who may include:

- Pastoral Care workers,
- Administrative staff, and
- Youth workers.

When undertaking such appointments, it is important to be mindful that churches must ultimately adhere to the requirements of the **Fair Work Act**, which comprise a safety net of minimum employment conditions including the National Employment Standards (NES) and modern awards, unfair and unlawful dismissal laws, agreement making obligations, and workplace rights specified in the FW Act<sup>4</sup>.

It is important for such appointments that:

- An Employment Contract is in place, that conforms to the requirements of the Act, including outlining the key NES minimum entitlements.
- There is a clear basis of remuneration within this agreement. This includes referencing where possible an award, such as the Clerks – Private Sector Award 2010, or Social, Community, Home Care and Disability Services Industry Award 2010.
- The employment status is clearly articulated (full-time, part-time, or casual).
- Appropriate leave entitlements are understood and maintained, superannuation is provided for and paid, and PAYG tax deducted and remitted.
- ReturnToWork SA policy is extended.

Further assistance can be provided in these areas by the State Ministry Team.

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<sup>4</sup> Reference should be made to the Fair Work Website, and specifically <https://www.fairwork.gov.au/how-we-will-help/templates-and-guides/best-practice-guides/small-business-and-the-fair-work-act>

## Section 2 – Exempt Benefits – Overview

### 2.1 Introduction

For most employees in the workplace, the tangible ‘reward’ that they get from their employment is simply financial remuneration (for example, a fortnightly pay cheque). In this situation it is relatively easy for the Australian Taxation Office (ATO) to accurately gauge the ‘real value’ of the employee’s income; as such a value is largely based around their taxable gross wage. Consequently, the amount of income taxation paid by the employee is calculated on the employee’s taxable income.

However, in the situation where an employee receives from their employer a tangible ‘reward’ for their employment that is not an allowable deduction, exempt benefit, or a ‘straight forward’ financial return (for example, private motor vehicles, housing, etc.), then the employee’s stated ‘taxable gross wage’ is not a completely accurate representation of what the employee is in actuality receiving from their employer as a taxable benefit for their employment.

This creates an issue in the eyes of the ATO, as the general common law precept for income taxation is that the value of taxable benefits received are taxed (as opposed to merely what is received as a taxable cash salary being taxed).

Therefore, in a case where taxable fringe benefits (FB) are received by an employee, the ATO still taxes the employee based on the financial remuneration that the employee receives from their employer (even though this financial remuneration is often lower than what would normally be paid to the employee if they were not provided with FB). The ATO then also taxes the employer on the value of the taxable FB that the employer has provided to the employee (FBT). The argument for this is broadly that the reduction of tax received by the ATO from the taxable financial remuneration received by the employee is (more than) offset by the respective FBT on the employer.

An additional effect of taxing the employer for the benefits provided is that as the employer is in effect paying an extra tax than they would be if their employees were provided their taxable remuneration solely on a cash basis. Therefore the provision of taxable FB to employees results in an additional cost to the employer, which in turn would often discourage employers from providing the said taxable FB.

So in summary, generally speaking if an employer provides a taxable FB to an employee then under the Fringe Benefits Tax Assessment Act 1986, the employer (not the employee) is liable to pay FBT (currently 46.5 per cent) on the value of the FB provided to the respective employees. However, the Act also states that certain employers (including many churches) are exempt from paying FBT in the following situations:

*“Where:*

- (a) the employer of an employee is a religious institution*
- (b) the employee is a religious practitioner*
- (c) a benefit is provided to, or to a spouse or a child of, the employee*
- (d) the benefit is not provided principally in respect of duties of the employee other than:
  - (i) any pastoral duties; or*
  - (ii) any other duties or activities that are directly related to the practice, study, teaching or propagation of religious beliefs; the benefit is an exempt benefit”<sup>5</sup>.**

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<sup>5</sup> Fringe Benefits Tax Assessment Act 1986 s. 57

In practical terms this means that a church can offer non-taxable FB to a minister (and others who meet the strict conditions of the Act) without having to pay FBT, thus effectively increasing the value of a minister's remuneration package without increasing the cost of same to the church. By allowing this situation, the Act is effectively recognising the contribution the church and the minister make in service to the wider community. For ease of reference, these 'fringe benefits' are referred to as 'ministry exempt benefits' (MEB) in this document.

## 2.2 Exempt Benefits - Advantages

The practical implication of the Fringe Benefits exemption is that the church can, without any additional salary cost, offer its minister a more attractive package by providing a mix of cash salary and non-cash benefits (fringe benefits) funded from a component of the minister's salary package. This effectively and legitimately decreases the taxable income of the minister.

The extent to which a minister will gain from the use of a remuneration package will depend on a range of factors, including:

- a) Choosing to have a MEA
- b) Living in their own home or a rental property
- c) Owning, leasing, or provided with a car
- d) Having significant expenses which are usually claimed on their annual tax return.

All these factors are governed by personal choices made by each minister. If in doubt, consult an accountant or professional advisor.

## 2.3 Exempt Benefits - Payments

It is important to note the following in payment of benefits:

- a) The part of the salary that is **not paid** to the minister's expense account but paid to the minister's personal bank account is considered **assessable income** for tax purposes. The PAYG withholding tax are to be deducted at the rates shown in the ATO's published tax tables and remitted to the ATO in accordance with the requirements of the tax legislation via the church's Business Activity Statement. A PAYG payment summary must be issued to the minister at the end of the tax year (by July 14<sup>th</sup> of the year).
- b) The part of the salary that is not paid to the minister into the minister's personal bank account but transferred to the MEA is considered an exempt benefit and is exempt from FBT under Section 57 of the FBTA.
- c) The car, housing and education fringe benefits are paid by the church to the MEA. The church is to make payments to third parties on behalf of the minister from these funds. These fringe benefits are exempt benefits and are exempt from FBT under Section 57 of the FBTA.

**As the church is responsible for the payment of the minister's salary, and accountable to State and Federal Government agencies, including the ATO, for the proper administration of the MEA, it is the church and NOT the minister personally that is accountable.**

## 2.4 Exempt Benefits - General Principles of Interpretation

In relation to the above Act please note:

- All four FBT exemption requirements stated in the excerpt from the Act quoted must be satisfied for the MEB FBT exemption to be available. Otherwise the church as the employer will be liable for FBT in relation to the respective FB.
- A local church would clearly satisfy the requirement that "the employer of an employee is a religious institution".

- The MEB FBT exemption is available to churches in relation to their employment of “religious representatives”, which may be defined as full or part-time employees who are principally involved in pastoral ministry employment or education.
- This may include a church minister (whose role is that of the majority of ministers –that is, someone who is principally involved in pastoral ministry), youth worker, pastoral assistant, student or educator involved in education that would lead to pastoral ministry qualification, etc.
- The MEB FBT exemption is not available to those employees (including ministers) whose role is not principally concerned with direct pastoral ministry (for example, administrators, caretakers, secretaries, etc.).
- The MEB FBT exemption is available for payments made in respect of not only the minister but also the minister’s spouse and children.

## 2.5 Exempt Benefits - What Kinds of Expenses Are Appropriate?

Under FBT rules, the scope of expenses that can be claimed from within an MEA is very broad. Examples of expenses include (but are not limited to):

### **Housing expenses (primary residential home)**

- Rent payments (where the church pays some, but not all of the rent for the property when the minister is living in rental accommodation, then the component paid by the minister may be reimbursed).
- Minimum mortgage payments
- Rates/taxes

### **Utilities (electricity, telephone, gas, etc.)**

- Insurances
- Furnishings
- Repairs/maintenance

### **Personal expenses**

- Office equipment
- Life insurance
- Private health fund fees
- Un-recouped medical expenses
- School fees
- Holidays
- Food and clothing

### **Motor vehicle**

- Insurance
- Maintenance/repairs
- RAA membership
- Registration/insurances
- Running costs (fuel, tyres, oil, etc.)
- Vehicle financing (loan, lease, etc.)

### **Personal development**

- Professional body/association expenses
- Books/journals/newspapers/etc.
- Seminar and conference costs
- Continuing education costs.

The following expenditure is **not to be paid** from the MEA:

- Cash withdrawals or advances including such things as traveler cheques, currency gift cards
- Fines or penalties imposed by Federal, State or Local government; such as Traffic Infringement Notices
- Taxation levies
- Child support or other Centrelink payments
- All tithes, offerings, donations and gifts of a financial nature
- Personal superannuation payments
- Acquisition of shares
- Investment property expenses
- Payments for home loan mortgages with offset facilities (draw downs where cash is received is not permissible).

Some further points to note:

- **The minister must not be seen to have any access to the cash equivalent of benefits, and must not have any part in the actual paying of the accounts for the benefits provided.**
- **Care must be taken when operating Ministry Benefits using a credit card, and strict procedural and substantial controls must be in place. These are outlined in the ensuing section.**
- Some mortgage products contain a redraw facility. Minimum mortgage repayments prevents the minister from redrawing the overpayment and accessing the cash equivalent of the benefit. New employment terms should reflect this condition.
- Whilst the church is exempt from the paying of FBT, it is **not exempt from audit to ensure compliance with the Act.** With the current system of self-assessment in taxation matters it is not a case of considering 'if we are audited what will happen?', but rather 'when we are audited are we properly prepared and acting in accordance with the law?'

## 2.5 Exempt Benefits - Proportion of Salary Package Recommended for Exempt Benefit Allocation

There are two different types of 'fringe' (or 'exempt') benefits that may be exempt from taxation:

- MEB available under the ministry exemption clause of the Fringe Benefits Tax Assessment Act (1986) sec 57. These are the 'fringe benefits' that are non-taxed for pastoral ministry workers as per the discussion in previous paragraphs.
- (Community) Exempt Benefits (CEB) available under other 'community wide legislation. These are tax exempt 'benefits' that are open to all Australians, or to specified employment groups. A common example of such a benefit is employee contributed superannuation, which is a non-taxed voluntary contribution that any employee in Australia can make from their cash salary into their respective superannuation account with an accredited superannuation fund.

Remembering that a minister's total salary package is calculated as the total of the cash salary component (which may or may not include CEB) plus the MEB component, the minister may nominate the portion of the remuneration package to be designated as "Employer Provided Benefits". It is suggested that a **minimum of 50%** of the recommended salary component be taken as taxable salary. In other words, the amount to be credited to the Ministry Expense Account should not exceed 50% of the recommended salary component plus allowances.

Whilst it is technically possible that 100 per cent of a minister's salary could feasibly be paid as MEB/exempt benefits (and therefore attract no taxation), such an extreme arrangement (or anything approaching it) may be considered by the ATO as a tax avoidance 'scheme' in terms of the general anti-avoidance provisions of the Income Taxation Assessment Act (1997) and/or the Fringe Benefits Tax Assessment Act (1986). Such tax evasion schemes can attract penalties of up to 200 per cent of the tax avoided.

Of course, it is also important to always keep in mind that the church must be careful to maintain the high moral position expected of us by the community and required of us as Christians. Salary packages should also not be compiled so as to be credibly interpreted as an 'income minimisation' technique for reporting purposes (for example, government benefits).

Please note:

- The above recommendations are proffered irrespective of whether the minister is employed full-time or part-time, or whether the total salary package is in line with the current recommended salary rates or not.
- Recommended salary levels have been construed on an expectation that the recommended split above will be utilised.
- In the situation where a minister avails themselves of CEB utilising the cash component of their salary, careful consideration should be given as to the pros and cons of the individual situation. The pros may include that the minister is able to legally obtain an enhanced benefit from his remuneration, whilst the cons may include the fact that if one was obtaining an overtly 'high' or 'extreme' level of tax exempt benefits then this may not be an appropriate course of action as per the discussion above.

**As always, remember that the State Office is only an email or phone call away and is only too glad to engage in discussion if so requested on any exempt benefit issue (or any other issue discussed in this document for that matter).**

## 2.6 An Important Distinction - Exempt Benefits vs Reimbursements

Exempt benefit payments are not to be confused with reimbursements of monies that should normally be paid by the church. Reimbursements are handled outside of the exempt benefit process. We sometimes hear of church treasurers interpreting exempt benefit payments as "bona fide ministry expenses." If that were true, it could be argued that they were "bona fide reimbursements" and thus not eligible to be part of the minister's EFBT claim. See section 5.

Reimbursements are amounts that should be paid by the church in the course of the minister's normal pastoral duties. These might include things like stationery for ministry related work done at home.

Churches may consider offering ministers a reimbursement expense account given that most ministers engage in meetings outside the church building. Ministers meeting with church and non-church people is an important part of contemporary ministry. Whilst we recommend that boards budget for \$500 per senior minister for 'entertainment' expenses per annum, we strongly advise that the terms for the use of this expense account be discussed with the minister.

## Section 3 – Exempt Benefits – Practical Administration Matters

### 3.1 Exempt Benefit Administration Overview

As previously discussed, the practical implications of any FBT exemption opportunities are that the church, without extra cash outlay, can provide a minister with an enhanced remuneration package by providing a combination of a cash salary along with selected benefits (as opposed to paying a total salary package in the form of a cash salary only). Following are a few points illustrating an acceptable method of administering and recording ministry exempt benefits (MEB):

- The church establishes a bank account for the sole use of MEB expenses (the bank account concerned could be styled 'Church XYZ Ministry MEB Account').
- The church deposits the MEB component of each pay period into the bank account at the same time as the cash component of the respective pay period is made.
- The minister submits allowable MEB expense invoices to the church for payment from the respective minister's MEB account.
- The church treasurer organises the payment of the respective invoices from the MEB account.
- At the conclusion of the term of ministry either:
  - the balance in the account can be transferred to the minister's **new** church's ministry fringe benefit account (if applicable)(no tax payable)
  - the balance in the account can be paid directly to the minister (this is cash income to the minister, so the minister would be liable for taxation on this payout and therefore this must be included on his payment summary for the particular taxable year.).

#### Further points to note:

- The minister **must not** be an authorised signatory on their respective MEB church bank account.
- The MEB account can accumulate funds throughout the minister's term of engagement (that is, there should not be any requirement that the funds be used within a particular time frame whilst the minister remains in the employ of the church).
- It is preferable that a separate MEB account be established for each minister and appropriately named to clearly identify to which minister it applies.
- As an alternative to submitting invoices for payment or reimbursement, a **credit card** may be established with an appropriate credit limit. The card should be an account with no cash access facility. The minister must be the sole user of the card, and the card can only be used for approved expenses. The statement should be sent direct to the church, and the treasurer should pay the account as per normal account expectations (this option may reduce the workload for church treasurers). Payments to the credit card must be reimbursements and should not be direct transfers each pay which would leave a surplus in the account. This would then be seen as a cash payment to the minister and therefore taxable.
- When the church transfers funds to the MEB account, the funds concerned become designated funds for usage on allowable fringe benefits at the minister's discretion (in accordance with the completed salary package pro-forma (sample of same is included as an appendix to this document)).
- As the MEB bank account is a church bank account, any payments made out of it that are for direct ministry costs are able to have the GST paid on those relevant expenses claimed back by the church and under the ABN of the church (as the church is obtaining the goods, not the minister).

- It is essential that detailed and accurate records are kept of all payments made from the MEB account (including an indication of the nature of goods and services paid for). It is not sufficient to merely have a record of the merchant's name and the total cost (as is often all that is printed on a credit card statement).
- Not only is detailed and accurate information important if the cost is a ministry cost on which GST can be claimed back on, but it is also required information in the situation of an audit by the ATO. Minimum records kept should include information detailing the type of benefit, the amount paid, the date the benefit was received, and who authorised the payment. (See Appendix A - Ministry Expense Account –Reimbursement Form Template.

### 3.2 Exempt Benefit Bank Accounts

The MEA is considered to be an employer account and so it is the church that provides the Exempt Benefits for the minister. **Funds remaining in the MEA remain the property of the church until they are acquitted.** The account is to have two (2) authorised account signatories and cheques are to be counter signed. The minister **must not** be one of those signatories. It is advised that cheques are not to be pre-signed.

Where payments are by way of direct debit from the MEA, documentation such as a letter requesting the direct debit payment is to be sighted and signed. Ministers are to be advised that any cash withdrawals, **cash advances or purchases of cheques that can be converted to cash are not exempt and are assessable** and will be recorded on the minister's PAYG payment summary for taxation and Medicare purposes.

### 3.3 Reporting of ministry exempt benefits on the ATO's individual Payment Summary

Most employers are required under law to disclose on each employee's payment summary (formerly known as 'group certificates') the value of any fringe benefits supplied. However, employers providing ministry exempt benefits (MEB) under the legislation discussed above are exempt from this requirement, that is, **MEB amounts must not be recorded on a minister's payment summary.** This presents a significant issue for the church and in particular the minister.

### 3.4 GST and MEA

Strictly legally speaking, the GST input credits can technically be claimed by the Church under the ABN of the church for those expenses incurred by a minister and paid from the MEA, where substantiation and other legal requirements are met (e.g. registered for GST, tax invoice for purchases > \$82.50). At law, any GST input credits belongs to the church and not the Minister.

**HOWEVER:** There is an ethical consideration as to the appropriateness of claiming the input credits, particularly with respect to expenses which are substantially or entirely otherwise of a personal nature (e.g. children's education expenses), and the Minister is getting fully reimbursed for the private expense in any case. For these reasons we do not encourage this practice.

### 3.5 Audit of the MEA

The MEA must be specifically designated and remains the property of the church. As a church account, it must also be audited along with other accounts and should be reported on the church balance sheet.

From a taxation perspective, whilst the church is exempt from paying FBT in relation to 'religious practitioners' it is not exempt from audit to ensure compliance with the ATO legislation. It is essential that accurate records be maintained of the operation of the MEA. Churches are to keep supporting documents for transactions of the MEA.

The ATO requires churches to keep records of receipts and payments from the MEA for 5 years. If the ATO conducts an audit of the MEA, the church will need to provide supporting documentation that the expenditure from the ATO is in accordance with the terms and conditions of employment.

### **3.6 Government Superannuation Initiative - “SuperStream”**

“SuperStream” is a standard for processing superannuation data and payments electronically. Under SuperStream, you need to pay super contributions for your employees electronically (EFT or BPAY) and send the associated data electronically.

The data is in a standard format so it can be transmitted consistently across the super system – between employers, funds, service providers and the ATO. It's linked to the payment by a unique payment reference number. This means you can make all your contributions in a single transaction, even if they're going to multiple super funds.

Small employers (19 or fewer employees) must meet the SuperStream standard by **30 June 2016**. For further information, go to <https://www.ato.gov.au/Super/SuperStream/Employers/>.

### **3.7 Churches of Christ Payroll and Superannuation Service**

#### **3.7.1 Introduction**

Churches of Christ in SA and NT Inc. have been offering a payroll processing service for Ministers and other employees of churches and agencies for some years. Designed to operate on a simple cost-recovery basis, the service exists to help these faith communities to meet their ever-changing payroll obligations in a simple, reliable and cost-effective manner.

#### **3.7.2 Scope of Services**

The scope of services offered is as follows:

- Calculation and processing of employee pay, including emailing of the Fair Work Act compliant payslip, on a fortnightly cycle (or otherwise as agreed),
- Calculation and remission of any payroll deductions on behalf of the employee,
- Calculation and withholding of PAYG tax,
- Calculation and remission of superannuation contributions,
- Workers compensation premium (“ReturnToWorkSA”) calculation and remittance,
- Calculation and management of employee leave entitlements,
- For Ministers, administration of Ministry Expenses in accordance with the Ministers' Appointment and Employment Handbook,
- Preparation and distribution of the annual Payment Summary for the employee, and
- Provision of payroll reporting to the faith community, for the benefit of Treasurers and Accountants.

#### **3.7.3 Systems Utilised**

We are pleased to be utilising the latest in cloud-based software from Xero. This allows us to provide electronic reporting, integration with the Australian Taxation Office, and the ability to support Super Streaming.

### 3.7.4 Employment and Financial Accountability Principles

Whilst Churches of Christ facilitate the payroll process, the employment accountability for the Minister or other staff member resides with the local employing church or agency. Within this framework, the following principles apply:

- An Employment Agreement would normally exist between the employing church or agency (in the case of a Minister, a “Ministry Agreement”), which sets out the terms and conditions of employment, which should include, but is not limited to, compliance with the National Employment Standards (NES) in the Fair Work Act 2009 (Cth). Payroll arrangements do not usurp any such agreement, nor do they replace the accountability of the church in terms of their employment obligations.
- Remuneration is a policy for the employing church or agency, as per this handbook.
- The Minister or other staff member remain accountable to adhere to the church or agency’s workplace policies and procedures.
- Ministers are subject to, and remain accountable to, the “Code of Ethics” as published by Churches of Christ in SA & NT Inc.
- The employing church or agency is responsible for the funding and term of appointment of the Minister or other staff member. An invoice is prepared from Churches of Christ in SA and NT Inc. and issued to the church or agency at each pay cycle.

We document these arrangements in a Memorandum of Understanding which clearly sets out:

- The scope of our payroll processing services,
- The frequency and timing of payroll processing,
- Mutual accountabilities and responsibilities vis-à-vis Churches of Christ in SA and NT Inc., and the employing church or agency, and
- Information to be provided by the employing church or agency to ensure that we can effectively provide the agreed services.

### 3.7.5 MEA Bank Account for Ministers

For Churches of Christ Ministers, as part of payroll arrangements, we pay the Ministry Expense component of the Minister’s salary into a Churches of Christ Financial Services “Minister’s Expense Account” (“MEA”). This is an online transactional account that is equipped with cheque, BPay, direct debit and online access (via “CCFS Online”). It also has a debit Visa Card option which can be linked to the account, making expense management even easier.

The operation of this account is according to the principles of this handbook, and we therefore work together with the Minister to schedule payments appropriately and ensure documentation is maintained to meet compliance requirements.

The Minister maintains full visibility of what is in the account at any time through online display access, which will mean for example they can see what is scheduled for payment when. Kindly note that there is no additional cost for this account facility – rather, it is an interest-bearing account which currently pays 1.85% p.a.

### 3.7.6 Cost of Service

We operate this service on a simple cost-recovery basis. Depending on the number of employees and frequency of payroll, costs are capped at a simple amount per employee per pay cycle, and agreed in advance. For further information, please contact **Phil Burgess** (General Manager – Operations, [pburgess@churchesofchrist-sa.org.au](mailto:pburgess@churchesofchrist-sa.org.au)) on 08 8443 7572.

## Section 4 – Minister's Salary and Centrelink Benefits

### 4.1 Centrelink Interpretation

The interaction of a minister's salary package and the provisions of the Social Security Act, as administered by Centrelink, is a complex area.

**We would recommend careful attention in this area, and ultimately to refer to Centrelink for advice in specific areas.**

Centrelink is the Commonwealth Government organisation that administers entitlements to social security benefits, including parenting payment. Centrelink uses different criteria than the ATO in determining how income affects these entitlements.

Family Tax Benefits and certain other Family Assistance support payments administered by them are also administered by Centrelink under the A New Tax System (Family Assistance) Act 1999.

The main difference with Centrelink determination of income for eligibility for government payments and allowances administered by Centrelink under the Social Security Act 1999 is in the payment of exempt benefits, allowances or payments under salary sacrifice arrangements.

In determining the total reportable income for religious practitioners, the ATO only assesses income that is included on the individual payment summary. Centrelink however, determines income for social security benefits on the basis of income disclosed on the payment summary plus any personal benefits received by the religious practitioner.

Although ministers receive the majority of the salary package as exempt fringe benefits, resulting in a reduced assessable income reported to the ATO, it does not mean that ministers are low-income earners according to Centrelink.

Centrelink uses the term '**valuable consideration**' as a guide to determine if a payment is a part of a minister's income under the Social Security Act 1991.

Under Section 1.1.M.150 of Centrelink's internal staff guide to Parenting Payment details: 'A Minister of Religion under a contract for service is neither an employee nor self-employed, but is a 'holder of a religious office'. A number of allowances and reimbursements of ministry related expenses may be deducted from the minister's gross income, but fringe benefits which are for the minister's own private benefit are "valuable consideration" and MUST be included'.

The Social Security Act defines income as "an income amount, earned, derived or received by the person for the person's own use or benefits." Including:

- a) Valuable consideration,
- b) Personal earnings,
- c) Money, or
- d) Profits.

Valuable consideration is defined as; "Receipts not in money form but capable of being valued in money terms. This occurs when a person receives goods, services or some other benefit in exchange for some item, action or promise." The following principles can therefore be used in assessing the remuneration of ministers for Centrelink payments:

- Fringe benefits paid to ministers for activities directly related to ministry are not to be included as income. For example, work -related: home office expenses, reimbursement of petrol expenses.
- Fringe benefits paid to ministers to meet expenses that are not directly related to ministry will be treated as income. For example: school fees, personal travel, clothing, holidays, purchase of assets for private use.

There can be payments to the minister that contain both private and ministry components. For example, work-related components, telephone and Internet allowance, utility expenses for the minister's residence.

In this situation the minister will need to determine what proportion is for private purposes. Where the percentage of private and church use of particular expenses has been agreed to, then this is to be recorded in the church minutes for future reference.

## 4.2 Centrelink and Classification of Payment Types

The table below indicates what types of Centrelink payments require disclosure of both the exempt and non-exempt component of the minister's salary package. **Kindly note that this information is updated by Department of Human Services from time to time, and for most recent information, reference should be made to the Department.**

Centrelink Payment Type	Disclose cash component of the salary?	Disclose exempt component of salary and exempt allowances?
Age pension	Yes	Yes
Austudy	Yes	Yes
Carer Payments	Yes	Yes
Child Care Benefits	Yes	<b>No</b>
Disability Support Pension	Yes	Yes
Family Tax benefit Part A	Yes	<b>No</b>
Family Tax benefit Part B	Yes	<b>No</b>
Maternity Allowance	Yes	<b>No</b>
Maternity Immunisation	Yes	<b>No</b>
Mature Age Allowance	Yes	Yes
Newstart Allowance	Yes	Yes
Parenting Allowance	Yes	Yes
Partner Allowance	Yes	Yes
Widow Allowance	Yes	Yes
Wife Pension	Yes	Yes
Youth Allowance	Yes	<b>No</b>

## APPENDIX A – Recommended Links

### Fair Work Information Statement

This document can be found here: [Fair Work Information Statement](#)

or by typing the following into your web browser:

<http://www.fairwork.gov.au/ArticleDocuments/724/Fair-Work-Information-Statement.pdf.aspx>

### Introduction to the National Employment Standards (Information Sheet)

This document can be found here: [National Employment Standards](#)

or by typing the following into your web browser:

<http://www.fairwork.gov.au/ArticleDocuments/723/Introduction-to-the-national-employment-standards.pdf.aspx>

### Fair Work Information Sheet on Records and Payslips as at September 2014

This document can be found here: [Record Keeping and Payslips](#)

or by typing the following into your web browser:

<http://www.fairwork.gov.au/About-us/policies-and-guides/Fact-sheets/rights-and-obligations/record-keeping-pay-slip>



## APPENDIX C – Ministers in Training – A Guidance Note

It is important that there be an objective scale on which an appropriate basis of remuneration can be calculated for ministry appointees who may not necessarily be qualified or have limited experience, or may be on the pathway to gaining qualification.

To provide guidance to churches in this situation, the following scale has been provided as a guideline. **Kindly note that this is a matter between the church and the ministry appointment**, which should be approached in a careful and gracious way which takes into account the full extent of the experience and giftings the ministry appointee brings to the role.

As such, the scale below is a **guideline only** in this sense, and it is expected that it would be a reference point only.

Experience and Training Scenario	Proportion of Recommended Salary Package
<b>Scenario A – Limited or No Training or Experience</b> Untrained Ministry Appointee (eg. new intern), with little training or experience	50%
<b>Scenario B – Up to 50% of Training Program Completed</b> Ministry appointees who are studying, and have completed up to 50% of their training program, and / or have an intermediate level of experience (includes some interns).	Up to 75%
<b>Scenario C – Over 50% of Training Program Completed</b> Ministry appointees who are over half-way with their study or training program, and have a more thorough level of experience.	Up to 85%
<b>Scenario D – Requisite Training and Experience</b> Recommended minimum remuneration for ministers with appropriate training and experience.	Base package as per Recommended Guide

## APPENDIX D – Fair Work Australia – Record Keeping Requirements



### Record-keeping & pay slips

- Australia's new workplace relations system
- What are the record-keeping obligations?
- What information must be made and kept in employee records?
- What are the pay slip obligations?
- What information must be included on the pay slip?
- What deductions may be made from an employee's pay?
- Best practice guidelines for issuing electronic pay slips
- Contravention of record-keeping and pay slip obligations
- Record-keeping and pay slip templates for employers
- Contact us

Download the fact sheet:

- Record-keeping and pay slips (PDF 810.7KB) (<http://www.fairwork.gov.au/ArticleDocuments/723/Record-keeping-and-pay-slips.pdf.aspx>)

You might also be interested in our (<http://www.fairwork.gov.au/pay/pay-slips-and-record-keeping/pay-slips>) pay slip template (DOC 53.5KB) (<http://www.fairwork.gov.au/ArticleDocuments/766/Pay-slip-template.doc.aspx>)

### Australia's new workplace relations system

From 1 July 2009, most Australian workplaces are governed by a new system created by the *Fair Work Act 2009*.

The Fair Work Ombudsman helps employees, employers, contractors and the community to understand and comply with the new system. We provide education, information and advice, help to resolve workplace complaints, conduct investigations, and enforce relevant Commonwealth workplace laws.

Employers who engage employees under relevant Commonwealth workplace laws are required to:

- make and keep accurate and complete records for all of their employees (e.g. time worked and wages paid)
- issue pay slips to each employee.

These record-keeping and pay slip obligations are designed to ensure that employees receive their correct wages and entitlements.

### What are the record-keeping obligations?

Employee records must:

- be in a form that is readily accessible to a Fair Work Inspector
- be in a legible form and in English (preferably in plain, simple English)
- be kept for seven years
- not be altered unless for the purposes of correcting an error
- not be false or misleading to the employer's knowledge.

Employee records are private and confidential. Generally, no one can access them other than the employee, their employer, and relevant payroll staff. Employers must make copies of an employee's records available at the request of an employee or former employee.

However, Fair Work Inspectors and organisation officials (such as a trade union) may access employee records (including personal information) to determine if there has been a contravention of relevant Commonwealth workplace laws.

For further information on the powers of Fair Work Inspectors entering premises and requiring the production of records or documents, please see the Fair Work Ombudsman Fact Sheet - Powers of Fair Work Inspectors (<http://www.fairwork.gov.au/About-us/policies-and-guides/Fact-sheets/About-us/powers-of-fair-work-inspectors>) .

For further information on the rights of organisation officials relating to entering premises and requiring the production of records or documents, please see the Fair Work Ombudsman Fact Sheet – Right of Entry (<http://www.fairwork.gov.au/About-us/policies-and-guides/Fact-sheets/rights-and-obligations/right-of-entry>).

### **What information must be made and kept in employee records?**

A range of information must be made and kept for each employee as prescribed by the *Fair Work Act 2009* and *Fair Work Regulations 2009*.

#### **General records**

General employment records must include all of the following:

- the employer's name
- the employer's Australian Business Number (ABN) (if any)
- the employee's name
- the employee's commencement date
- the basis of the employee's employment (full or part time and permanent, temporary or casual).

#### **Pay records**

Records of pay must include all of the following:

- the rate of pay paid to the employee
- the gross and net amounts paid and any deductions from the gross amount
- the details of any incentive-based payment, bonus, loading, penalty rate, or other monetary allowance or separately identifiable entitlement paid.

#### **Hours of work records**

Records relating to hours worked by employees are to include the following:

- In the case of a casual or irregular part-time employee who is guaranteed a pay rate set by reference to time worked, a record of the hours worked by that employee
- For any other type of employee, the record must specify the number of overtime hours worked each day, or when the employee started and finished working overtime hours (but only if a penalty rate or loading must be paid for overtime hours actually worked)
- A copy of the written agreement if the employer and employee have agreed to an averaging of the employee's work hours.

#### **Leave records**

If an employee is entitled to leave, the record must include both:

- leave taken, if any
- the balance of the employee's entitlement to that leave from time to time.

If an employer and employee have agreed to cash out an accrued amount of leave, the employer must keep both:

- a copy of the agreement to cash out the amount of leave
- a record of the rate of payment for the amount of leave cashed out and when the payment was made.

#### **Superannuation contributions records**

If the employer is required to make superannuation contributions for the benefit of the employee, the record must include all of the following:

- the amount of the contributions made
- the dates on which each contribution was made
- the period over which the contributions were made
- the name of any fund to which a contribution was made
- the basis on which the employer became liable to make the contribution, including a record of any election made by the employee (including the date) to have their superannuation contributions paid into a particular fund.

Note: Employers who contribute a defined benefit interest in a defined benefit fund do not have to fulfil the reporting requirements relating to superannuation contributions.

### **Individual flexibility arrangement records**

If an employer and employee agree in writing to an individual flexibility arrangement in relation to a modern award or enterprise agreement, a record must include both:

- a copy of the agreement
- a copy of any notice or agreement terminating the flexibility arrangement.

### **Guarantee of annual earnings records**

If an employer gives a guarantee of annual earnings under the *Fair Work Act 2009*, the employer must make and keep a record of:

- the guarantee
- the date of any revocation of the guarantee (where applicable).

### **Termination records**

Where the employment has been terminated, the records must include both:

- whether the employment was terminated by consent, by notice, summarily, or in some other manner (specifying that manner)
- the name of the person who terminated the employment.

### **Transfer of Business records**

Where there has been a transfer of business under the *Fair Work Act 2009*, at the time of transfer, the old employer is required to transfer to the new employer each employee record concerning a transferring employee.

If the transferring employee becomes an employee of the new employer after the transfer, the new employer must ask the old employer to provide them with the employee's records. The old employer must give the records to the new employer.

For further information regarding transfer of business, please see the Fair Work Ombudsman Fact Sheet – Transfer of Business (<http://www.fairwork.gov.au/About-us/policies-and-guides/Fact-sheets/rights-and-obligations/when-businesses-change-hands>).

### **What are the pay slip obligations?**

Pay slips must be issued to each employee:

- within one working day of pay day, even if an employee is on leave
- in electronic form or hard copy.

It is best practice for pay slips to be written in plain and simple English.

### **What information must be included on the pay slip?**

Pay slips must contain details of the payments, deductions, and superannuation contributions for each pay period. The following information must be included on all pay slips issued to each employee as prescribed by the *Fair Work Act 2009* and the *Fair Work Regulations 2009*.

A pay slip must include all of the following:

- The employer's name
- The employer's ABN (if any)
- The employee's name
- The date of payment
- The pay period
- The gross and net amount of payment
- Any loadings, monetary allowances, bonuses, incentive-based payments, penalty rates, or other separately identifiable entitlement paid.

Additionally, where relevant, a pay slip must include any of the following:

- If the employee is paid an hourly pay rate, the ordinary hourly pay rate and the number of hours worked at that rate and

- the amount of payment made at that rate
- If the employee is paid an annual rate of pay (salary), the rate as at the last day in the pay period
- Any deductions made, including the name, or the name and number, of the fund or the account of each deduction
- If the employer is required to make superannuation contributions for the benefit of the employee:
  - the amount of each contribution the employer made or is liable to make during the pay period
  - the name, or name and number, of any superannuation fund into which the contributions were made or will be made.

### **What deductions may be made from an employee's pay?**

Under the *Fair Work Act 2009*, an employer is allowed to make a deduction from an employee's pay if one of the following applies:

- the employee has authorised the deduction in writing (which must specify the amount) and the deduction is principally for the employee's benefit
- the deduction is authorised by the employee in accordance with an enterprise agreement and other industrial instruments (e.g. an award or agreement made under the former *Workplace Relations Act 1996*)
- the deduction is authorised by or under a modern award or order of the Fair Work Commission
- the deduction is authorised by or under a law or an order of a court.

Deductions that are commonly authorised include income tax deductions, superannuation or health insurance contributions, and trade union dues.

A term in an enterprise agreement, modern award, industrial instrument, or contract of employment that allows for deductions has no effect if:

- the deduction is directly or indirectly for the benefit of the employer and is unreasonable
- the employee is under the age of 18 and the employee's parent or guardian has not authorised the deduction in writing.

The *Fair Work Regulations 2009* provides that certain deductions are to be treated as reasonable. These include, for example, the recovery of costs incurred through private use by the employee of a credit card, mobile phone, or petrol for a vehicle that have been provided by the employer.

### **Best practice guidelines for issuing electronic pay slips**

Electronic pay slips must be provided to an employee (unless issued a hard copy) and include the same information as hard copy pay slips.

Employers should:

- give electronic pay slips to each worker, such as via email or into an electronic personal account (employers should not simply store them on a database)
- issue electronic pay slips in an easily printable format.

By way of best practice, employers should:

- issue electronic pay slips to employees securely and confidentially
- ensure that employees can access and print their electronic pay slips in private (e.g. it would be inappropriate to issue an electronic pay slip to an employee who doesn't have access to a computer terminal to privately read and print their pay slip).

### **Contravention of record-keeping and pay slip obligations**

Fair Work Inspectors may issue an employer with an infringement notice for failing to meet their record-keeping and pay slip obligations under the *Fair Work Act 2009*.

An infringement notice is similar to an on-the-spot fine and is an alternative to taking matters to court. An infringement notice can be issued within 12 months after the day on which contravention(s) is alleged to have occurred. Generally, an employer has 28 days to pay the penalty in the infringement notice.

The maximum fines payable from an infringement notice are:

- \$510 per contravention - for an individual
- \$2,550 per contravention - for a body corporate

If an employer's failure to meet their obligations is serious, wilful or repetitive, Fair Work Inspectors may recommend the matter be taken to court.

For further information on Infringement Notices, including their payment, please see the Fair Work Ombudsman Fact Sheet Infringement Notices (<http://www.fairwork.gov.au/About-us/policies-and-guides/Fact-sheets/About-us/infringement-notices>).

### Record-keeping and pay slip templates for employers

The Fair Work Ombudsman has created various templates to help employers meet their record-keeping and pay slip obligations. You can download these templates at [www.fairwork.gov.au](http://www.fairwork.gov.au).

Record-keeping and payslip obligations are provided for by sections 535 & 536 of the *Fair Work Act 2009*.

### Contact us

Fair Work Online: [www.fairwork.gov.au](http://www.fairwork.gov.au)

Fair Work Infoline: 13 13 94

### Need language help?

Contact the Translating and Interpreting Service (TIS) on 13 14 50

### Hearing & speech assistance

Call through the National Relay Service (NRS):

- For TTY: 13 36 77. Ask for the Fair Work Infoline 13 13 94
- Speak & Listen: 1300 555 727. Ask for the Fair Work Infoline 13 13 94

Page reference No: 2417

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The information contained on this website is general in nature. If you are unsure about how it applies to your situation you can call our Infoline on 13 13 94 or speak with a union, industry association or workplace relations professional.

Visitors are warned that this site may inadvertently contain names or pictures of Aboriginal and Torres Strait Islander people who have recently died.

[www.fairwork.gov.au](http://www.fairwork.gov.au)

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Find out more  
[www.fairwork.gov.au](http://www.fairwork.gov.au)  
Small Business Helpline – 13 13 94



Fair Work  
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## APPENDIX E – Fair Work Australia – Employee Details Form

### Employment record – Employment details

To be completed and retained for each employee

#### Employer details

Registered name:

Trading name (if applicable)\*:

ABN:

#### Employee details

Full name:

Date of birth\*:  /  /  Phone number(s)\*:

Address\*:

Tax file number\*:  Date employment commenced:  /  /

Employment status:  Ongoing  Temporary  Other (specify)

Full-time  Part-time  Casual  Other (specify e.g. piece worker)

Ordinary hours of work\* (for part-time or full-time employee; e.g. 38 hours):  hours

Agreed/required method of pay (e.g. EFT)\*:

Agreed/required pay period (e.g. weekly)\*:

Agreed/required pay day (e.g. Tuesday)\*:

Apprenticeship/Traineeship details\*:

Name of Award or Agreement that applies\*:

Classification/job title under the Award/Agreement\*:

Superannuation fund name†:

Employee membership no:

Workers' compensation – policy name:

Policy no:

Next of kin\*:  Contact details\*:

### Termination of employment details

Date notice of termination given to the employee/employer\*:

Date of the employee's last day at work:

Method of termination of employment:  By consent  By notice  Summarily  
 Other (specify)

Reason(s) given\*:

**If the termination of employment was by the employer:**

Name of person who terminated the employee's employment:

Position in the business\* (of the person who terminated the employee):

\* The Fair Work Ombudsman acknowledges that the inclusion of information marked with an asterisk (\*) is not a requirement under the Fair Work Regulations 2009, effective 1 July 2009. This template is provided as a best practice model. An employer is not compelled to provide information outside the requirements contained in the record keeping provisions of the Fair Work Regulations 2009. The minimum record keeping requirements are contained in the Fair Work Regulations 2009.  
† Any election made by the employee in relation to the fund into which superannuation contributions are made must be kept by the employer, along with a record of the date of the election.

- Note:
1. All records must be retained for a minimum of 7 years from the date the employee ceases their employment or an alternation to the record is made, whichever occurs first.
  2. Where there is a transfer of a business from the old employer to the new employer (e.g. the business changes hands), employee records must be transferred to the new employer for each transferring employee.
  3. An employer must ensure that employee records are not, to the extent of their knowledge, false or misleading.

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**Personal leave (sick leave (for illness/injury), carer's leave or compassionate leave)**

Employee name: / /

Date employee commenced: / /

Type of leave* (e.g. sick leave or compassionate leave)	Leave accrual*		Details of leave taken				Reason for leave/Comment*	Balance
	Date	Hours accrued	Leave taken		Certificate*			
			From	To	Yes	No		
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours
	/ /	hours	/ /	/ /				hours

**Leave cashed out**

Note: An employer and employee can agree to cash out an accrued amount of leave in accordance with the Fair Work Act 2009. Where this occurs, an employer must keep a copy of the agreement.

Amount of leave cashed out*	Type of leave* (e.g. personal leave)	Rate of payment	Amount paid*	Date paid
hours		\$00.00	\$0,000.00	/ /
hours		\$00.00	\$0,000.00	/ /

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Note:

1. All records must be retained for a minimum of 7 years from the date the employee ceases their employment or an alteration to the record is made, whichever occurs first.
2. Where there is a transfer of a business from the old employer to the new employer (e.g. the business changes hands), employee records must be transferred to the new employer for each transferring employee.
3. An employer must ensure that employee records are not, to the extent of their knowledge, false or misleading.

### Long service leave

Employee name:

Date employee commenced: / / Employee termination date: / /

Award/Industrial instrument (e.g. General Retail Industry Award 2010):

Long service leave entitlement comes from (e.g. specify the relevant state legislation):

Leave accrual (rate of accrual e.g. weekly, monthly, etc.):

Leave accrual*			Details of leave taken				Leave balance	
Date	Weeks	Additional days	Leave taken		Amount paid		Date paid*	Leave balance
			From	To	Amount paid*	Date paid*		
/ /	weeks	days	/ /	/ /	\$00,000.00	/ /	/ /	weeks
/ /	weeks	days	/ /	/ /	\$00,000.00	/ /	/ /	weeks
/ /	weeks	days	/ /	/ /	\$00,000.00	/ /	/ /	weeks
/ /	weeks	days	/ /	/ /	\$00,000.00	/ /	/ /	weeks
/ /	weeks	days	/ /	/ /	\$00,000.00	/ /	/ /	weeks
/ /	weeks	days	/ /	/ /	\$00,000.00	/ /	/ /	weeks
<b>Leave balance upon termination of employment</b>								
					<b>Amount paid upon termination of employment</b>			<b>\$00,000.00</b>
								<b>Date of payment</b>
								/ /

\* The Fair Work Ombudsman acknowledges that the inclusion of information marked with an asterisk (\*) is not a requirement under the Fair Work Regulations 2009, effective 1 July 2009. This template is provided as a best practice model. An employer is not compelled to provide information outside the requirements contained in the record keeping provisions of the Fair Work Regulations 2009. The minimum record keeping requirements are contained in the Fair Work Regulations 2009.

**Note:**

1. All records must be retained for a minimum of 7 years from the date the employee ceases their employment or an alteration to the record is made, whichever occurs first.
2. Where there is a transfer of a business from the old employer to the new employer (e.g. the business changes hands), employee records must be transferred to the new employer for each transferring employee.
3. An employer must ensure that employee records are not, to the extent of their knowledge, false or misleading.

**Other leave (e.g. parental leave, leave without pay, etc.)**

Employee name: / /

Type of leave*	Leave accrual*		Details of leave taken				Reason for leave/Comment*	Balance
	Date	Hours accrued	Leave taken		Certificate*			
			From	To	Yes	No		
	/ /	hours	/ /	/ /			hours	
	/ /	hours	/ /	/ /			hours	
	/ /	hours	/ /	/ /			hours	
	/ /	hours	/ /	/ /			hours	
	/ /	hours	/ /	/ /			hours	
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	/ /	hours	/ /	/ /			hours	

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**Note:**

1. All records must be retained for a minimum of 7 years from the date the employee ceases their employment or an alteration to the record is made, whichever occurs first.
2. Where there is a transfer of a business from the old employer to the new employer (e.g. the business changes hands), employee records must be transferred to the new employer for each transferring employee.
3. An employer must ensure that employee records are not, to the extent of their knowledge, false or misleading.
4. There are additional record keeping requirements for employees taking paid parental leave under the Paid Parental Leave Act 2010 and the Paid Parental Leave Rules 2010. Find out more at [www.familyassist.gov.au](http://www.familyassist.gov.au).

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## APPENDIX G – Glossary of Terms

ABN	Australian Business Number
ATO	Australian Tax Office
BAS	Business Activity Statement
CEB	Community Exempt Benefits
EFT	Electronic Funds Transfer
FAO	Family Assistance Office
FB	Fringe Benefits
FBT	Fringe Benefits Tax
FBTAA	Fringe Benefits Tax Assessment Act
FWA	Fair Work Australia
LSL	Long Service Leave
MEA	Ministry Employment Agreement
MEB	Ministry Exempt Benefits
MEBS	Ministers' Employment Benefits Scheme
NES	National Employments Standards
PAYG	Pay As You Go -Taxation
PC Leave	Personal/Carer's Leave
PPL	Paid Parental Leave
TSP	Total Salary Package

