



THE LAW SOCIETY  
OF NEW SOUTH WALES

Our ref: Employment: REMv796287

30 January 2014

The Australian Taxation Office  
Latitude East  
52 Goulburn Street  
SYDNEY NSW 2000

By email: [damian.byrnes@ato.gov.au](mailto:damian.byrnes@ato.gov.au)

Dear Mr Byrnes,

**Taxation Ruling TR2012/8**

**Income Tax and fringe benefits tax: assessability of amounts received to reimburse legal costs incurred in disputes concerning termination of employment (“Ruling”)**

I am writing to you at the request of the Law Society's Employment Law Committee (“Committee”).

The Committee previously commented on an earlier draft version of this ruling, draft Taxation Ruling TR2012/D2.

The Committee supports the provision of such rulings as very practical guides to practitioners and their clients in understanding the effects of, and complying with, the relevant taxation legislation. While the Committee supports the issue of the draft Ruling, it makes a number of suggestions regarding technical aspects of the examples given to further improve the utility of the Ruling.

It is important that any examples that form part of the draft Ruling are consistent with the existing employment and industrial laws. This will ensure that there is no confusion in the application of the Ruling, so that practitioners are assisted with clear and consistent guidelines as to the taxation rules that apply when settlement of termination of employment claims are reached. In particular, the Committee is concerned that there are several statements in the examples set out in the Ruling which are not necessarily consistent with the *Fair Work Act 2009* (“FW Act”).

**Example 1**

The Committee understands the reference in Example 1 to “wrongful dismissal” as meaning a reference to “unfair dismissal”. It would be preferable to amend this reference to read “unfair dismissal”.

The Committee notes that costs are only awarded in unfair dismissal cases in very rare circumstances. The example would have much wider application if it was recast as an adverse action claim.

### **Example 3**

In the Committee's view, the last sentence in paragraph 15 as part of Example 3 is quite misleading. Either this sentence should be deleted or deleted and replaced with words to the effect that:

Debbie is not covered by a Modern Award or Enterprise Agreement and earns in excess of the High Income Threshold and accordingly does not have access to unfair dismissal protection.

To say that the FW Act does not apply to Debbie as her annual salary is above the statutory cap is simply not correct.

In paragraph 16 which also forms part of Example 3, the reference to "unfair dismissal" should be a reference to "breach of contract" consistent with paragraph 15.

Should you wish to discuss any of the matters raised in this letter please contact Menaka Venkata, Policy Lawyer for the Employment Law Committee by email to [menaka.venkata@lawsociety.com.au](mailto:menaka.venkata@lawsociety.com.au) or on 9926 0214.

Yours faithfully,



Ros Everett  
**President**