

Macrossan & Amiet Solicitors

news update

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S O L I C I T O R S

Are expenses of Youth Allowance tax deductible? The Current State of Play.

By Robert Krahe

Setting the Scene

Can a student receiving Youth Allowance claim their costs of study, also referred to as self-education expenses against their assessable income? When you consider that the person in receipt of Youth Allowance is assessed and may pay tax on that income, it would seem arguable, in fairness that they should be permitted to deduct self-education expenses incurred against that tax liability.

The long held opinion of the Australian Taxation Office

The Taxation Office of Australia (ATO) has a long held view that self-education expenses incurred through the receipt of Youth Allowance are not deductible under the relevant taxation legislation. It must be born in mind that whilst the ATO may form an opinion on how the law can be interpreted and how the ATO might intend to apply that interpretation, the opinion formed by the ATO is not a statement on what the law is, that is the role of the Courts.

The reason given by the ATO for not allowing self-education expenditure by students receiving Youth Allowance is that they see the expenditure as incurred in connection with the students future employment and therefore too



Robert Krahe

soon in time to be regarded as having been incurred in deriving assessable income. This is to be distinguished from a student who is currently employed and engaged in study.

In order for a self-education expense to be deductible what must be shown is that there exists a link between the students study and employment, which has a relevant connection to the taxpayer's current income-earning activities. For example, a person who works as a maths teacher would be able to deduct the self-education expenses of undertaking study in advanced mathematics because it will enhance that persons ability to earn greater income in their employment as a maths teacher. What is looked for is whether the self-education expense has enabled a taxpayer to improve or maintain professional

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Local people. Local expertise. Industry leaders.

Applications for Development. When and how you get a say...

By Andrea Green

In a region where development is booming, it is important that the members of the community are aware of their rights to have a say. You may, for example, see a sign advising that premises are being changed from a hobby shop to a nightclub, or a vacant block to a factory. Well, below is information on how you can effectively and validly have your say...

The development classification

Regardless of the scale or type of change to a premise, it is likely that any change at all will be deemed a “development”.

Planning law is now governed by the newly enacted *Sustainable Planning Act 2009 (Qld)*, which defines development as being “building work” or “material change in use” of a premises, to name a few. In actual fact, building your children a cubby house could classify as a development, so it is important to check with your local authority before you commence any work.

In a general sense, there are five types of “developments”, each

having different requirements. Those are:

1. Self-Assessable Developments - developments that do not require a building permit from the council but must comply with building codes and regulations.
2. Exempt Developments - lawful developments that include mining and forestry activities, demolition, temporary building work, and minor alterations.
3. Impact Assessable Developments - developments that require council’s assessment of the proposal against planning schemes and State planning policies. These require public notification of the development, which allows members of the public an opportunity make submissions for or against the development.
4. Code Assessable Developments - developments that are compared and assessed against building codes by a council assessor where public notification is not required and



Andrea Green

5. Prohibited Developments - developments that are declared prohibited by a State planning scheme or a State planning regulatory provision.

The council will determine what classification a development falls under. Developments can be partly impact assessable and partly another type of development. In this instance the public can make submissions with respect to only the impact assessable aspect.

Do I have to be notified of the development?

For Impact Assessable Developments (“IAD’s”), a person or company (“Applicant”) must bring an application to the relevant council for assessment. These developments are called ‘impact assessable’ because they are in a class in which their *impact* to the community must be assessed. The council will appoint an Assessment Manager to carry out the assessment process. Council requires IAD’s to be brought to the public attention so that public concerns may be raised and considered. Applicants must give notice of their application by advertising it in all of the following ways:

- At least once in a newspaper circulating generally in the locality of the proposed development;
- A notice on the premise; and,
- A notice to the owners of all adjoining land.

Non-compliance with the advertising requirement is not fatal to the Applicant’s application; so long as the Assessment Manager



Applications for Development. When and how you get a say...

Continued from page 2

is satisfied that notice of the application has been brought to the public attention.

On receiving the application, the Assessment Manager will either make an acknowledgement to the Applicant that no further information is required, or he/she will make a request for further information.

The advertisement will specify the length of the notification period. It will either be 15 or 30 business days. This period begins as soon as the Assessment Manager gives acknowledgement to the Applicant, or the Applicant has complied with the information request.

Do I get a say?

The public can make submissions during the notification period. Although most submissions are made against a development, submissions can also be made in favour of a development. Once a person makes a submission they become a submitter.

A submission must be properly made unless the Assessment Manager exercises his/her discretion to accept the submission despite the non-compliance. However, be warned that a submission not properly made precludes the submitter from appealing the Assessment Managers decision. A properly made submission is:

- in writing;
- received during the notification period;
- state the submitters name an address and be signed; and, of course...

- it must state the reasons for objection with any supporting information.

The Assessment Manager must receive any submissions by 5:00pm on the last day of the notification period. There are no fees for submitting an objection.

Success in numbers

Only submitters have the right to appeal a decision of the Assessment Manager. For this reason it is important that, if a development is looming in your neighbourhood, you get in and support other submitters.

Although it might be more convenient to send around a clipboard for signatures and make a submission by way of petition, it is actually more effective if individuals each make their own submissions. The benefits of doing so include:

- a greater chance of success as consideration will be given to the high degree of the support for, or concern against the development; and,
- the ability to disburse the costs of the appeal to the Queensland Planning and Environment Court which means getting results cheaper.

On what grounds can I object to a Development?

There are many grounds for objection. These include issues such as:

- Non-ecological sustainability (developments must comply with the relevant 'Desired Environmental Outcomes' of the State or the Assessment

Manager must refuse the application);

- Impact on amenity (dust, odour, light), urban design (ugliness or bulk) and character of the existing streetscape (size, greenspace, setback from road frontages, height);
- Traffic problems (congestion, unsafe roads or intersections);
- Noise pollution (increase in background noise levels);
- Unsuitability or inappropriateness to the demographics of the area (see the Australian Bureau of Statistics website for information on your suburb's demographics);
- Irregular or disruptive hours of trade; and,
- Contrary to the reasonable expectations of the community (judged against the State's planning schemes).

What if the development affects the value of my land?

The value of privately owned land is not a relevant town planning concern and is not considered by the Assessment Manager in making the decision. This ground by itself will fail. However, if this remains a concern, it may be raised as a practical consequence to one of the above grounds. For instance, if traffic will be made significantly worse, it may detriment the economic worth of the suburb or street.

For further information, see the Queensland, Department of Infrastructure and Planning website at www.dip.qld.gov.au.

Our March chuckle:

A Doctor and a Lawyer, in separate cars, collided on a country road. The Lawyer, seeing that the Doctor was a little shaken up, helped him from his car and offered him a drink from his hip flask. The Doctor accepted and handed the flask back to the Lawyer, who closed it and put it away.

“Aren't you going to have a drink yourself?” asked the Doctor.

“Sure, after the police leave!” replied the Lawyer.

profile

Robyn Mitchell

By Andrew Telford

I remember first meeting Robyn some years ago. At the time I thought that Robyn didn't fit the mould of the typical person involved in property development. Over the years since that initial meeting I have dealt with Robyn extensively but without really knowing that much about her background and how she and her husband John came to live in Airlie Beach. So I sat down and asked her.

Robyn grew up in Sydney, the older sister of well-known Airlie Beach resident Colin Crossley. Robyn's dad was involved in the automotive industry and her mother a school teacher. Whilst Robyn didn't actually say so, I gathered that, unlike her brother Colin, she was academically gifted having started university at the age of 15 graduating from Sydney University with a Bachelor of Arts and a Diploma of Education. Robyn notes that a highlight of attending university was having Germaine Greer as one of her tutors but refers to a life-changing event when at 18 she travelled to Papua New Guinea with a student group to perform volunteer work. At this time, Robyn developed a great passion not just wanting to help people but wanting to enable people to help themselves to become self sufficient.

This visit was the catalyst for Robyn to return there aged 20 after graduating from university to spend a total of ten years working in Papua New Guinea. Robyn fondly remembers working in the Kundiawa District as a community development officer known to the community as "Missus Bilong Government" being in charge of local marriage, divorce as well as various social and community programs. This was a time before Papua New Guinea had self government.

Most of her time in New Guinea (8 years) was spent lecturing at the Port Moresby Teachers College where Robyn met her husband John who was studying at the university at the time. It was because of her marriage to John and the archaic laws that applied in New Guinea at

the time that Robyn lost all of her work entitlements and automatically became ineligible for promotion. This sparked Robyn's interest in women-related issues and which has become a lifelong passion and one that continues to this day.

After eliminating all other places in Australia to live, John and Robyn decided to move from New Guinea and to start a new life with their infant son in South Australia. Both Robyn and John became involved in teaching. Being a chronic over-achiever, Robyn's career spiralled upwards working in various positions including:-

- being deputy head and senior lecturer in an adult migrant education service;
- being involved in special education and disability issues which ultimately resulted in Robyn becoming the manager of the rehabilitation department of Workcover in South Australia;
- consultant to the South Australian Council of Social Services being charged with the co-ordination of statewide training upon the introduction of GST in South Australia. Robyn had to arrange for 74 seminars to various healthcare providers throughout the whole of South Australia during a three month period;
- consultant to the aged care sector.

During this time, Robyn also managed to complete a Masters degree. Ultimately, John had to take on more of a role at home when Robyn became the head of the rehabilitation department of Workcover, being responsible for 350 staff. One could imagine the difficulty of being in charge of negotiations between Unions, employers and Government and this resulted in a massive workload. At that point, Robyn was the first female in this role and ultimately became the longest serving manager of the rehabilitation department in South Australia.

When I asked Robyn what was her greatest success she pointed to her involvement with an organisation



Robyn Mitchell

devolved from the disability sector where money had to be made and there was no government funding. This resulted in the development of a consultancy business, called the Community Business Bureau, which provided business plans for child care centres in South Australia and various consultancy services for other internal divisions of the organisation as well as outside clients.

At the end of the day, the organisation developed a very strong financial position but following a health scare, Robyn and John then looked to move on to the next phase of their life which resulted in the move to the Whitsundays. It was at this time that Robyn was called upon to help with the care of her parents who had now shifted to live in Bowen to be close to their son, Colin Crossley, who had shifted from Sydney to live in Airlie Beach to run the local bus company. In 2000 Robyn shifted to Airlie Beach and left John behind for 18 months whilst he finished up with his own work. Never one to miss an opportunity, brother Colin realised that he now had his multi-talented sister living locally and he quickly installed Robyn as the manager of Whitsunday Transit.

Both Robyn and Colin endured the tragic loss of their beloved parents within a short space of time in 2002. Colin's son Darren then shifted to the area and took over the management of the bus company and Robyn was then quickly shuffled into the role of co-ordinating a number of property developments in Airlie Beach which included the Marina Shores complex adjacent to Abel Point Marina and the Shorelines land development which is situated at Scrubby Hill at the end of Stewart Drive.

It was during those early years in Airlie Beach when John was still in

profile - Robyn Mitchell *Continued*

South Australia that Robyn threw herself into community service. She is the current President of the Zonta Club and has been actively involved in various community organisations including the Whitsunday Crisis and Counselling Service, the Chamber of Commerce, the Reef Festival and the list goes on. Such has been Robyn's contribution to the

community that in 2009 she was named as the Whitsunday Citizen of the Year.

In all of my dealings with Robyn I have never heard her speak poorly of any person. Even when she perhaps has had good reason to do so! It is very reassuring to know that our community can expect to benefit from Robyn's hands-on, enthusiastic

and very positive approach to the various community issues that currently and will confront us for years to come. If I could sum up the formula for Robyn's success and that of her family it would be a strong work ethic, a wholehearted commitment to family, honesty and humility. It is that simple.

news

Powers of Attorney in Queensland

By Francesco Maconi

A Power of Attorney is a formal document, by which one person (the principal) gives another person (the attorney) the authority to act on their behalf.

Powers of Attorneys are relevant to all Australians, particularly the elderly who may need assistance in making their personal or financial decisions.

Personal/Health & Financial Matters

A principal may create a power of attorney document so someone else can decide over the principal's personal/health matters or over the principal's financial matters.

Personal/Health matters may include decisions about:

- The location and people with whom the principal lives
- Where the principal studies or works
- Whether to apply for a licence or permit for the principal
- Whether to consent to or refuse health care procedures for the principal.

Financial matters may include decisions about:

- Whether to enter into contracts
- Whether to grant or discharge a mortgage
- Whether to invest capital (but only under authorised investments)
- Whether to enter into real estate transactions

- How to manage a principal's money
- Whether to pay the principal's debts

Types of Powers of Attorney

Powers of Attorney can either be 'general' or they can be 'enduring'.

A 'general' Power of Attorney may be given for a limited period of time or for a specific purpose. These powers cease if the principal loses capacity to make his or her own decisions.

An 'enduring' Power of Attorney is different. It continues even after a principal loses capacity to make his or her own decisions.

What is the Law in Queensland?

In Queensland the law that protects people giving power of attorney documents and sets forth the obligations for attorneys is the *Power of Attorney Act 1998* (Qld).

This Act limits the potential for abuse by placing high levels of responsibility on attorneys. Section 66, for example, says that attorneys must exercise their powers honestly and with reasonable diligence. Failure to do so is an offence and attorneys could have to pay compensation.

Section 88 says that an attorney can only give gifts to a relative or close friend of the principal. This also limits the potential for abuse, because the attorney cannot make an unauthorised gift to a stranger. The value of the gift must also be reasonable.



Francesco Maconi

Can the appointed Attorney be compensated?

It is important to remember that there is no obligation to pay an attorney for the work performed. In other words, a Power of Attorney document will be effective regardless of whether the principal pays the attorney.

At times however an attorney may wish to be paid. In these cases it is best to include a written clause in the Power of Attorney, which specifies how much and how often an attorney should be paid.

Another thing to keep in mind is that attorneys can always claim out-of-pocket expenses for their work. This is the case regardless of whether the attorney is receiving a wage or payment. In all cases a claim for out-of-pocket expenses must be reasonable.

Appointing an attorney can be a daunting experience. Only a trusted individual, such as a relative or a close friend should be appointed as your attorney. It is important to remember that you can specify which decisions your attorney can make and how these decisions should be made on your behalf.

For more information see <http://www.justice.qld.gov.au/files/Guardianship/epashort.pdf>

The Queensland Ombudsman can assist you with a complaint about your local Council or a Government Department.

By Sarah Dennis

Has your local Council made a decision that you feel is unfair? Maybe you have been unfairly treated by a Government Department? The Queensland Ombudsman is an independent complaints investigation agency that may be able to help you. It acts as an independent authority to ensure that public agencies, such as State Government Departments and Bodies, and Local Councils act fairly towards Queenslanders.

What sort of complaints does the Ombudsman investigate?

If you believe that a public agency has made an unfair or incorrect decision, the Ombudsman has the power to investigate. The types of complaints it hears include actions and decisions of public agencies and their staff that are unlawful, unreasonable, unfair, improperly discriminatory or otherwise wrong. For example, the Ombudsman may investigate cases where: -

- You have been unsuccessful in a request for tender with your local Council, and believe the Council did not follow its due process;
- There has been a failure of a Government Department (e.g. Queensland Health) to act on a complaint made by a member of the public;
- There has been a failure of Child Safety Services to investigate a child protection matter you have raised with the department;

- You believe you have been unfairly charged by a Council or Government Department;
- There has been an allocation of Crown Land and Water Resources;
- Your land has been resumed by the Government;
- The Education Department has made a decision you do not agree with;
- The local Council has made a decision regarding land use, building or licensing.

How do I make a complaint?

You can make a complaint either online or in writing to the Ombudsman. You will be required to provide the Ombudsman with copies of any relevant documents so that they can investigate the matter. For example, if your complaint relates to the Council's tendering process, you should provide the Ombudsman with copies of all the tendering documents, and any correspondence between yourself and the Council.

In your complaint, you should give the Ombudsman details of all the relevant facts relating to your matter. You should also explain why you believe the decision was wrong or unfair. Tell the Ombudsman the outcome you are seeking. Do you want an apology, a different decision, or a change to the way the Council does things?



Sarah Dennis

What will the Ombudsman do?

Once the Ombudsman investigates your complaint, if it feels that the agency has made a mistake or treated you unfairly, it will recommend that the agency correct its mistake or take some other action. If the Ombudsman chooses not to investigate your complaint, it will provide you with written reasons.

The Ombudsman will also assist State Agencies and local Councils improve their administrative practice by conducting training on good decision-making and complaints management where appropriate.

Although the recommendations made by the Ombudsman are not binding on the Agency involved, it should be noted that public agencies implement the Ombudsman's recommendations in almost every case.

For this reason the Queensland Ombudsman is a very effective way of rectifying the effect of unfair or incorrect decisions, and is an avenue you should consider next time you are dissatisfied with the behaviour of a Council or Government Department.

For more information, please see <http://www.ombudsman.qld.gov.au/>

Are expenses of Youth Allowance tax deductible? The Current State of Play.

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skill or knowledge or would lead, or be likely to lead to the taxpayer receiving higher income.

Australian Taxation Office opinion rejected by Federal Court

That the ATO interpretation of the law is not always correct was vividly demonstrated in the recent decision handed down by The Full Federal Court of Australia. In which the stance taken on the deductibility of self-education expenses, long held by the ATO, was put aside in the wake of *Federal Commissioner of Taxation v Anstis* [2009] FCAFC 154. The facts of the case involved a student who was in receipt of Youth Allowance while undertaking a teaching degree. At the end of the 2005/06-tax year the student furnished her tax return in which she declared income from employment unrelated to her study, as well as Youth Allowance. No income was declared in relation to employment as a teacher.

The student argued that the expenses she incurred, being textbooks, pens, paper, laptop depreciation etc was necessary in order to complete her course of study and continue to receive her assessable income, that being Youth Allowance. In order to do this the student's argument was that the character of the expenditure should be seen as necessary in order to meet her study requirements and satisfy the ongoing eligibility criteria applicable to Youth Allowance under the *Social Security Act*, namely continued enrolment in an approved course of study. The Commissioner sought to counter the student's argument by contending that the expenditure was not connected with the receipt

of Youth Allowance. In his submission to the Court the Commissioner contended that as the student had begun her course of study with the view of becoming a teacher, that the expenditure was incurred with the view of gaining future employment rather than the retention of Youth Allowance.

What questions the Court asked

The Full Federal Court of Australia, in considering these two competing arguments, looked to long-standing authority from the High Court of Australia as to whether the issue was one of looking to what the purpose of the expenditure was or whether the issue was whether the expenditure was incurred in gaining that income. The High Court in a decision referred to as *Ronpibon Tin NL v Federal Commissioner of Taxation* stated that an expense, in order to be deductible, requires the outgoing to be 'incurred in the course of' gaining or producing the taxpayers assessable income'. The key question then being did the student incur the expenditure in the course of gaining or producing her assessable income?

The Court found the student's income was due to her receipt of Youth Allowance and having preserved that qualification throughout the relevant period by satisfying the requirement of undertaking and progressing through her teaching degree. The Court reasoned that even though it may be true to say that the student did undertake her course of study for the purpose of obtaining a teaching degree and obtaining employment in the future; the correct interpretation of the taxation legislation was whether the expense was incurred in the

course of deriving assessable income, not whether the outgoing was incurred for the purpose of deriving assessable income.'

To put that another way, the Court was only concerned with whether the student spent her money purchasing text books for study and because of that was able to progress through her teaching degree and therefore receive income in remaining eligible for Youth Allowance; the expenditure then being incurred in the course of her study. The question is not whether she expended those monies for the purpose of receiving income from Youth Allowance or whether she spent the money for the purpose of in the future earning income through employment as a teacher. The student did not need to show that she enrolled in a teaching degree in order to qualify for Youth Allowance.

What this means to you

Although the Full Federal Court confirmed that students could deduct self-education expenses incurred in retaining Youth Allowance, this position it seems, has not yet been fully accepted by the ATO. The ATO has sought leave to appeal to the High Court of Australia and announced that until the appeal is heard it will continue to apply its long held view that you cannot claim a deduction for self-education expenses. Those receiving Youth Allowance and considering claiming deductions for study expenses may in the meantime want to consider seeking advise from a qualified taxation adviser. At the very least the Federal Court has left the door open, for the time being, for students to claim their self-education expenses.

last word

Ensure safety is more than just luck.

It is all too often that you see on the news and in newspapers stories about people being involved in accidents. As lawyers, we often have to deal with the legal consequences of accidents. Often, a moment of inadvertence can result in serious consequences for yourself and others. For example, it is not unusual to see people speaking on their mobile phone whilst driving although, this has been illegal for some time and is a major cause of accidents.

Recently, I was involved in a matter where the operator of a boat was picking up some divers. One of the divers got caught in the current and

was struck by the propeller which caused severe lacerations to the diver's legs and torso. The consequences for the operator of the vessel are that he entered a plea of guilty to a charge of unsafe operation of a vessel and as a consequence was fined \$4,000.00 and had his Master Class 5 ticket suspended for four months. He is also being sued for compensation by the diver.

As I sat in court listening to the facts of the matter it made me think of all the times that I've climbed in and out of a boat and the many times I have done something which could have resulted in serious injury. This



Kylie Davies

has prompted me to encourage everyone to think about safety particularly when undertaking seemingly innocuous tasks that you have done many times. The consequences of failure to take things seriously can be life changing. Until next month, Kylie.



Contact us

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If you have any queries about any of the articles in this newsletter, please feel free to email mac@macamiet.com.au or phone 4944 0333 (Mackay) or 4948 4500 (Whitsundays) to speak directly with the author of the article.

Real people, real smiles, real service!



Find us on the ground floor of the Macrossan & Amiet Building - 55 Gordon Street, Mackay.

The partners and staff of MACROSSAN & AMIET SOLICITORS are proud to be associated with Wide Bay Australia Ltd.

In fact, for those of you who don't know, Wide Bay Australia has a full service Agency in Amiet House at 55 Gordon Street, Mackay.

Wide Bay Australia is your easy local alternative when it comes to finance & banking and our Agency Staff are fully equipped to assist you.

From Finance (home loans, investment loans, equity loans & lines-of-credit) to Personal and Business Banking (everyday accounts, savings accounts, term deposits, cash management accounts) and from Insurance (home & contents, landlords, car, boat, caravan & trailer, Life) to Travel Money & Foreign Exchange (Travellers Cheques, Cash Passport Debit Card, Telegraphic Transfers) - you'll get personal attention and fast service!

In particular, if you are looking at buying a residential property and need to arrange finance - come and speak with Jenny without obligation. She will be pleased to assist you to make it happen!

In fact, come into the Gordon Street Agency and speak with Jenny about a loan before 30 April, 2010 and you will also go into the draw to WIN A \$2,000 HOME HARDWARE VOUCHER!

Jenny Moohin is our Loans Consultant based at Gordon Street Agency.



Jenny has been involved with lending for 8 years and has a Diploma in Financial Services from the

Institute of Financial Services together with an FSRA Tier 2 Training Certificate. Prior to working as a Loans Consultant, Jenny had 15 years as an experienced legal secretary/conveyancer.

Jenny can assist with Wide Bay Australia's range of home loans for owner-occupiers, investors, vacant residential land and acreage.

Nicole Klages is our Senior Customer Service Consultant.



Nicole has an FSRA Tier 2 Training Certificate from the Institute of Financial Services and has 4 years experience in

Customer Service within the finance industry.

Nicole can assist with everyday and savings accounts, term deposits, insurance, credit cards, foreign exchange and the full range of Wide Bay Australia's banking services.