Submission No: 218
AUTHORISED: 1/11/06

STANDING COMMITTEE ON FAMILY AND HUMAN SERVICES

INQUIRY INTO BALANCING WORK AND FAMILY

1 November 2006

McMillan Shakespeare Limited

Our Submission

- Childcare and salary packaging
- Our experiences in seeking to establish a childcare facility
- A childcare model for all employers

Some Statistics

- 20% of our **employer** clients offer **in-house childcare** as a salary sacrifice benefit
- 64% of our **employer** clients offer **external childcare** as a salary sacrifice benefit
- 0.2% of our **employee** clients salary sacrifice in-house childcare and the average payment in the last financial year was about $6,400
- 0.4% of our **employee** clients salary sacrifice **external childcare** and the average payment in the last financial year was $2,700

Employer Provided Child Care Services

- FBT exemption in s47(2) of FBTAA
- Restated in ATO Ruling (TR 2000/4 – ESSO case)
- Not translated into action by employers
  - Financial risk – lease, build, own
  - Exposure to operator
  - Lack of suitable property and location
  - Equal access difficult to satisfy – large employers require multiple sites
  - Hard to quantify employee needs – changing demographics
  - Cost of a private ruling
  - Employees lose access to CCB and 30% Tax Rebate
  - Administration

TR 2000/4 – Esso Case

Two factors need to be considered :

1. the control the employer has over the premises; and
2. the consistency of an employer's actions and activities on the premises with those normal business practices.

- the management agreement with the childcare operator operate on an ordinary and arm's length basis;
- the management agreement be able to be terminated on normal commercial grounds;
- where the management agreement is terminated, there be no impediment to another childcare operator being engaged to manage and operate the facility on the particular premises;
- the document granting the employer or employers tenure or occupancy rights operate on normal commercial grounds;
- the termination of the management agreement not require termination of the employer's or employers' tenure or occupancy rights, nor should the rights under the tenure or occupancy rights agreement (for example, amount of rental, conditions of occupancy) be affected in any way;
- the management agreement and tenure or occupancy rights agreement operate independently of each other;
- the calculation of rentals under the tenure or occupancy rights agreement, management fees and childcare fees be commercially based and independent of each other;
- the risks held by the various parties be consistent with the relevant premises being those of the employer or employers (for example, risks in respect of flow of funds, insurance, etc);
- the tenure and occupancy rights as they affect the childcare facility come from the employer or employers, rather than the operator;
- the composite rights of control over the service provider, e.g., the right of termination, be on a normal commercial basis. For example, clauses in management agreements that have the effect that an operator may only be removed in the most extraordinary or extreme circumstances give rise to the inference that the activity is not 'business operations' of the employer or employers.